

OMB NO. 1124-0006; Expires February 28, 2014

U.S. Department of Justice
Washington, DC 20530

Exhibit A to Registration Statement
Pursuant to the Foreign Agents Registration Act of 1938, as amended

INSTRUCTIONS. Furnish this exhibit for EACH foreign principal listed in an initial statement and for EACH additional foreign principal acquired subsequently. The filing of this document requires the payment of a filing fee as set forth in Rule (d)(1), 28 C.F.R. § 5.5(d)(1). Compliance is accomplished by filing an electronic Exhibit A form at <http://www.fara.gov>.

Privacy Act Statement. The filing of this document is required by the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.*, for the purposes of registration under the Act and public disclosure. Provision of the information requested is mandatory, and failure to provide this information is subject to the penalty and enforcement provisions established in Section 8 of the Act. Every registration statement, short form registration statement, supplemental statement, exhibit, amendment, copy of informational materials or other document or information filed with the Attorney General under this Act is a public record open to public examination, inspection and copying during the posted business hours of the Registration Unit in Washington, DC. Statements are also available online at the Registration Unit's webpage: <http://www.fara.gov>. One copy of every such document, other than informational materials, is automatically provided to the Secretary of State pursuant to Section 6(b) of the Act, and copies of any and all documents are routinely made available to other agencies, departments and Congress pursuant to Section 6(c) of the Act. The Attorney General also transmits a semi-annual report to Congress on the administration of the Act which lists the names of all agents registered under the Act and the foreign principals they represent. This report is available to the public in print and online at: <http://www.fara.gov>.

Public Reporting Burden. Public reporting burden for this collection of information is estimated to average .49 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Registration Unit, Counterespionage Section, National Security Division, U.S. Department of Justice, Washington, DC 20530; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

1. Name and Address of Registrant Ketchum Inc. 1285 Avenue of the Americas New York, New York 10019		2. Registration No. 5758
3. Name of Foreign Principal Tourism Australia	4. Principal Address of Foreign Principal 6100 Center Drive, Suite 1150 Los Angeles, CA 90045	
5. Indicate whether your foreign principal is one of the following:		
<input checked="" type="checkbox"/> Foreign government <input type="checkbox"/> Foreign political party <input type="checkbox"/> Foreign or domestic organization: If either, check one of the following: <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Association </div> <div> <input type="checkbox"/> Committee <input type="checkbox"/> Voluntary group <input type="checkbox"/> Other (<i>specify</i>) _____ </div> </div> <input type="checkbox"/> Individual-State nationality _____		
6. If the foreign principal is a foreign government, state:		
a) Branch or agency represented by the registrant Tourism		
b) Name and title of official with whom registrant deals Kristen Malaby, Marketing Communications Manager		
7. If the foreign principal is a foreign political party, state:		
a) Principal address N/A		
b) Name and title of official with whom registrant deals		
c) Principal aim		

Formerly CRM-157

FORM NSD-3
Revised 03/11

8. If the foreign principal is not a foreign government or a foreign political party:

a) State the nature of the business or activity of this foreign principal.

N/A

b) Is this foreign principal:

Supervised by a foreign government, foreign political party, or other foreign principal

Yes ☐ No ☐

Owned by a foreign government, foreign political party, or other foreign principal

Yes ☐ No ☐

Directed by a foreign government, foreign political party, or other foreign principal

Yes ☐ No ☐

Controlled by a foreign government, foreign political party, or other foreign principal

Yes ☐ No ☐

Financed by a foreign government, foreign political party, or other foreign principal

Yes ☐ No ☐

Subsidized in part by a foreign government, foreign political party, or other foreign principal

Yes ☐ No ☐

9. Explain fully all items answered "Yes" in Item 8(b). *(If additional space is needed, a full insert page must be used.)*

10. If the foreign principal is an organization and is not owned or controlled by a foreign government, foreign political party or other foreign principal, state who owns and controls it.

N/A

EXECUTION

In accordance with 28 U.S.C. § 1746, the undersigned swears or affirms under penalty of perjury that he/she has read the information set forth in this Exhibit A to the registration statement and that he/she is familiar with the contents thereof and that such contents are in their entirety true and accurate to the best of his/her knowledge and belief.

Date of Exhibit A	Name and Title	Signature
	Craig Mersky, General Counsel	

U.S. Department of Justice
Washington, DC 20530

OMB NO. 1124-0004; Expires February 28, 2014

Exhibit B to Registration Statement
Pursuant to the Foreign Agents Registration Act of
1938, as amended

INSTRUCTIONS. A registrant must furnish as an Exhibit B copies of each written agreement and the terms and conditions of each oral agreement with his foreign principal, including all modifications of such agreements, or, where no contract exists, a full statement of all the circumstances by reason of which the registrant is acting as an agent of a foreign principal. Compliance is accomplished by filing an electronic Exhibit B form at <http://www.fara.gov>.

Privacy Act Statement. The filing of this document is required for the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.*, for the purposes of registration under the Act and public disclosure. Provision of the information requested is mandatory, and failure to provide the information is subject to the penalty and enforcement provisions established in Section 8 of the Act. Every registration statement, short form registration statement, supplemental statement, exhibit, amendment, copy of informational materials or other document or information filed with the Attorney General under this Act is a public record open to public examination, inspection and copying during the posted business hours of the Registration Unit in Washington, DC. Statements are also available online at the Registration Unit's webpage: <http://www.fara.gov>. One copy of every such document, other than informational materials, is automatically provided to the Secretary of State pursuant to Section 6(b) of the Act, and copies of any and all documents are routinely made available to other agencies, departments and Congress pursuant to Section 6(c) of the Act. The Attorney General also transmits a semi-annual report to Congress on the administration of the Act which lists the names of all agents registered under the Act and the foreign principals they represent. This report is available to the public in print and online at: <http://www.fara.gov>.

Public Reporting Burden. Public reporting burden for this collection of information is estimated to average .33 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Registration Unit, Counterespionage Section, National Security Division, U.S. Department of Justice, Washington, DC 20530; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

1. Name of Registrant Ketchum Inc.	2. Registration No. 5758
3. Name of Foreign Principal Australia Tourism	

Check Appropriate Box:

4. ☒ The agreement between the registrant and the above-named foreign principal is a formal written contract. If this box is checked, attach a copy of the contract to this exhibit.
5. ☐ There is no formal written contract between the registrant and the foreign principal. The agreement with the above-named foreign principal has resulted from an exchange of correspondence. If this box is checked, attach a copy of all pertinent correspondence, including a copy of any initial proposal which has been adopted by reference in such correspondence.
6. ☐ The agreement or understanding between the registrant and the foreign principal is the result of neither a formal written contract nor an exchange of correspondence between the parties. If this box is checked, give a complete description below of the terms and conditions of the oral agreement or understanding, its duration, the fees and expenses, if any, to be received.

7. Describe fully the nature and method of performance of the above indicated agreement or understanding.

Ketchum will provide public relations services to promote tourism to Australia.

8. Describe fully the activities the registrant engages in or proposes to engage in on behalf of the above foreign principal.

Ketchum will provide media relations and develop press materials and public relations plans.

9. Will the activities on behalf of the above foreign principal include political activities as defined in Section 1(o) of the Act and in the footnote below? Yes ☐ No ☒

If yes, describe all such political activities indicating, among other things, the relations, interests or policies to be influenced together with the means to be employed to achieve this purpose.

EXECUTION

In accordance with 28 U.S.C. § 1746, the undersigned swears or affirms under penalty of perjury that he/she has read the information set forth in this Exhibit B to the registration statement and that he/she is familiar with the contents thereof and that such contents are in their entirety true and accurate to the best of his/her knowledge and belief.

Date of Exhibit B 4 Sep 2012	Name and Title Craig Mersky, General Counsel	Signature 
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Footnote: Political activity as defined in Section 1(o) of the Act means any activity which the person engaging in believes will, or that the person intends to, in any way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party.



Australian Government



Tourism Australia

**PUBLIC RELATIONS
SERVICES AGREEMENT**

**BETWEEN
TOURISM AUSTRALIA
AND
KETCHUM INC.**

Darling Park Tower 2 Level 18 201 Sussex Street Sydney NSW 2000 Australia GPO Box 2721 Sydney NSW 1006 Telephone: +61 2 9360 1111
Facsimile: +61 2 9361 4056 ABN: 996 575 487 12

www.tourism.australia.com

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THIS AGREEMENT IS MADE ON 9 SEPTEMBER 2011

PARTIES

TOURISM AUSTRALIA ABN 99 657 548 712, a statutory body established under the *Tourism Australia Act 2004* (Cth) of Level 18, Tower 2, Darling Park, 201 Sussex Street, Sydney, in the State of New South Wales, Australia (**Tourism Australia**)

and

KETCHUM INC. of 1285 Avenue of the Americas, New York, NY 10019 USA (**Agency**)

RECITALS

- A. Tourism Australia carries on the business of a national tourism organisation for the Australian Government throughout the world.
- B. Tourism Australia wishes to utilise the services of the Agency, on a non-exclusive basis, for the purpose of providing the PR Services.
- C. The Agency agrees with Tourism Australia to provide the PR Services to Tourism Australia on the terms and conditions of this Agreement.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement and the above recitals, the following terms have the meanings set out below.

Ad Hoc PR Service means any public relations or related service provided to Tourism Australia by the Agency that do not fall within the Retainer-based Services or the Fee-based Services arrangements under this Agreement.

Ad Hoc PR Service Fees means the fees set out in clause 12.4.

Agreement means this document and its schedules.

Annual PR Strategy means the range of PR Campaigns that the Agency recommends could be implemented to support Tourism Australia's AOP.

AOP means the Annual Operating Plan which describes the range of activities that Tourism Australia will implement in North and South America during the period 1 July and 30 June of any given year.

Approved Contract Cost means the maximum total annual PR Services Fees which Tourism Australia will pay to the Agency during each Contract Year as outlined in Schedule 5 of this Agreement.

Authorisation means:

- (a) an approval, authorisation, consent, declaration, exemption, permit, licence, notarisation or waiver, however it is described, and including any condition attached to it; and
- (b) in relation to anything that could be prohibited or restricted by law if a government agency (including a government department or other body, a governmental, semi-governmental or judicial person or a person who is charged with the administration of a law) acts in any way within a specified period, the expiry of that period without that action being taken,

including any renewal or amendment.

Brief means the description provided by Tourism Australia pursuant to clause 6.1 to the Agency setting out Tourism Australia's requirements for the delivery of non-retainer PR Services.

Business Day means any day other than a Saturday, Sunday or a day that is a statutory or public holiday in the jurisdiction where the PR Services are being performed.

Commencement Date means 9 September 2011.

Confidential Information means all confidential, non-public or proprietary information disclosed by or on behalf of Tourism Australia to the Agency, regardless of how the information is stored or delivered, disclosed to or learnt by the Agency under or in connection with this Agreement or the provision of PR Services whether before or after the date of this Agreement, including without limitation information about Tourism Australia's product and/or service development, marketing strategies, internal or external business operations, strategies, assets, trade secrets, know-how, financial affairs, clients, suppliers and distributors, or any information which is designated as "confidential", "proprietary", or some similar designation, but does not include information that is in or enters the public domain other than through a breach of this Agreement or any obligation of confidence owed to the disclosing party.

Conflict of Interest means any conflict of interest of any nature including:

- (a) any actual or threatened litigation, proceeding, claim or allegation by the Agency, its related bodies corporate or any of its Representatives:
 - (i) against or in any way involving Tourism Australia; or
 - (ii) which may materially affect in an adverse manner the ability of Tourism Australia to obtain the PR Services from the Agency;
- (b) any proven or alleged breach or default by the Agency of any law, regulation, agreement, order or award binding on the Agency, whether admitted or contested, which may materially affect in an adverse manner the ability of Tourism Australia to obtain the PR Services from the Agency;
- (c) any matters relating to the commercial, financial or legal capacity or status of the Agency which may materially affect, in an adverse manner, the ability of Tourism Australia to obtain the PR Services from the Agency;
- (d) the supply or proposed supply of goods or services to or from a person in a manner or to an extent that may prejudice or be likely to prejudice the confidentiality or privacy of any of Tourism Australia's Confidential Information;
- (e) the supply or proposed supply of goods or services to or from a person who has a Conflict of Interest with Tourism Australia; and
- (f) any awareness of any matters involving the Agency that may attract public attention that may damage the reputation of Tourism Australia or adversely affect the ability of Tourism Australia to obtain the PR Services from the Agency.

Contract Year means the period from the Commencement Date to 8 September 2012, and thereafter from 9 September of one year to 8 September the following year.

Contractor means any third party who is approved by Tourism Australia pursuant to clause 8 to provide any of the PR Services.

Dispute means any dispute, controversy, difference or claim between the parties as to:

- (a) the construction of this Agreement;
- (b) the rights or obligations of a party under this Agreement; or

- (c) any other matter arising out of or relating to this Agreement including any question regarding the existence, validity or termination of this Agreement,

other than one entitling a party to claim for urgent interim or interlocutory relief.

Existing Material means any Material which is used by the Agency for:

- (a) a specific PR Service, which predates the date of Tourism Australia's instructions for that specific PR Service.

and is owned by a third party.

Fee-based PR Charges means those charges incurred by the Agency as general disbursement costs for materials and resources required to support the delivery of Fee-based PR Services and that have been approved by Tourism Australia.

Fee-based PR Services Fee means fee that is payable for the provision of Fee-based PR Services

Fee-based PR Services means those approved PR Campaigns outlined in the Annual PR Strategy that Tourism Australia has given approval for the Agency to deliver.

Force Majeure Event means:

- (a) any occurrence or omission as a direct result of which the party relying on it is prevented from or delayed in performing any of its obligations (other than a payment obligation) under this Agreement and that is beyond the reasonable control of that party; or
- (b) an act of war (whether declared or not) or terrorism, the mobilisation of armed forces, civil commotion or riot, natural disaster, lightning, fire, earthquake, storm, flood, drought, disease, explosion, industrial action or labour disturbance, currency restriction, embargo, action or inaction by a government agency, or a failure of a supplier, public utility or common carrier.

Intellectual Property Rights means all rights, title and interest, including without limitation all accrued rights of action, conferred under statute, common law or equity now or in the future and wherever in the world subsisting in and related to:

- (a) inventions, discoveries and novel designs including developments or improvements of equipment, products, technology, processes, methods or techniques;
- (b) copyright (including future copyright) and Moral Rights throughout the world in all literary, artistic, dramatic and musical works, sound recordings, cinematograph films, television and radio broadcasts, computer software, and any other works or subject matter in which copyright subsists or may in the future subsist;
- (c) confidential information, trade secrets, know-how and database rights; and
- (d) trade marks, service marks and business names,

whether registered, the subject of applications for registration, registrable or unregistered and includes the right to sue for damages for past infringement of the those rights.

Insolvency Event means the happening of any one or more of the following events:

- (a) an application is made to a court for an order, or an order is made, that a body corporate be wound up;
- (b) an application is made to a court for an order appointing a liquidator or a provisional liquidator in respect of a body corporate, or a liquidator or provisional liquidator is appointed, whether or not under an order;

- (c) except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;
- (d) a body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so (except to reconstruct or amalgamate while solvent) or is otherwise wound up or dissolved;
- (e) a body corporate is or states that it is insolvent;
- (f) as a result of the operation of section 459F(1) of the *Corporations Act 2001* (Cth), a body corporate is taken to have failed to comply with a statutory demand;
- (g) a body corporate is or makes a statement from which it may be reasonably deduced by Tourism Australia that the body corporate is the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act 2001* (Cth);
- (h) a body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate;
- (i) a person becomes an insolvent under administration as defined in section 9 of the *Corporations Act 2001* (Cth) or action is taken which could result in that event; or
- (j) any act or event analogous or having a substantially similar effect to any of the events specified above.

Key Personnel means the Agency personnel principally responsible for the performance of the PR Services as set out in Schedule 8.

Material means material in any form (whether visible or not), including documents, advertisements (in print, electronic or recorded format), recordings on disc or any other form of storage, photographs, films, sound recordings, creative concepts, artwork, literary works, graphic works, musical works, models, designs, slogans, trade marks, trade names, logos, video tapes, transparencies, reports, products, equipment, information, data, software, software tools and software development methodologies, and includes all releases, updates and amendments to the original Material.

Moral Rights means:

- (a) for authors, rights of integrity of authorship, rights of attribution of authorship, rights to not have authorship falsely attributed;
- (b) for performers, rights of integrity of performership, rights of attribution of performership, rights to not have performership falsely attributed

and rights of a similar nature conferred by statute, that exist or that may come to exist, anywhere in the world in any works or any part of any work in which copyright subsists that is created under this Agreement.

Personal Information has the same meaning as set out in the Privacy Act.

PR Campaign means the range of public relations activities that the Agency has been assigned to deliver to support the PR Services.

PR Material means all Material in any form (whether visible or not), which arises from or is created by the Agency, on behalf of the Agency (including any Material created by a Contractor) in providing the PR Services and which is used, or intended to be used, by Tourism Australia in connection with the PR Services including:

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- (a) all Material brought or required to be brought into existence by or on behalf of the Agency or any Contractor pursuant to this Agreement, or otherwise provided by the Agency or any Contractor to Tourism Australia pursuant to this Agreement;
- (b) the product or results produced, concepts developed (including creative concepts), or work done, by the Agency or any Contractors pursuant to this Agreement, including modifications to documents, reports, recordings, information and data of any kind stored by any means; and
- (c) any other Material.

PR Services Fee means the fees set out in clause 12.

Privacy Act means the *Privacy Act 1988* (Cth).

Privacy Laws means:

- (a) the Privacy Act, the *Telecommunications Act 1977* (Cth) and any other applicable laws, rules or regulations governing Personal Information;
- (b) any other principles, industry codes and policies relating to the collection, use, disclosure, storage or granting of access rights to Personal Information, which Tourism Australia notifies the Agency is a Privacy Law for the purposes of this Agreement.

Project Co-ordinators means the persons identified in Schedule 4.

Project Hours means the number of hours accepted by the parties as being required to undertake the PR Services and not the number of hours actually undertaken by the Agency to deliver the PR Services.

PR Services means those public relations and related services provided to Tourism Australia by the Agency or a Contractor under this Agreement as set out in clause 6 (Fee-based PR Services) and 7 (Ad-hoc PR Services) and Schedule 1

Project Delivery Timeframe means the timetable that the Agency has agreed to deliver PR Services.

Representatives means directors, officers, employees, agents, servants, contractors or representatives.

Retainer-based PR Services means those PR Services that the Agency will provide on an on-going basis throughout the duration of the Agreement.

Retainer-based PR Services Fee means those charges incurred by the Agency as general disbursement costs for materials and resources required to support the Retainer-based PR Services and that have been approved by Tourism Australia.

Term means the initial term of this Agreement as set out in clause 23.1, unless this Agreement is terminated earlier in accordance with this Agreement.

Tourism Australia Material means any Material that is provided by Tourism Australia to the Agency and/or any Contractor under this Agreement.

Tourism Australia's Office means Tourism Australia's office in USA located at 6100 Center Drive, Suite 1150, Los Angeles, CA 90045, USA.

1.2 In this Agreement unless the contrary intention appears:

- (a) a reference to this Agreement or another instrument includes any variation or replacement of any of them;
- (b) the singular includes the plural and vice versa;
- (c) words importing a gender include any other gender;

- (d) if a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning;
- (e) "dollars" or "\$" is to an amount in Australian currency unless indicated otherwise;
- (f) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated inclusive of that day;
- (g) if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day;
- (h) where the word "includes" or "including" is followed by a list of examples the word is not used as a term of limitation;
- (i) the terms **related body corporate** and **subsidiary** have the meaning given to them in the *Corporations Act 2001* (Cth);
- (j) in the event of any inconsistency between the terms of this Agreement and any schedule, then the terms of this Agreement will prevail;
- (k) clause headings are for convenient reference only and do not affect the interpretation of this Agreement; and
- (l) no rule of law will apply that requires that the provisions of a document will be construed against the party which prepared the documents.

2. SCOPE OF THE AGREEMENT

2.1 Appointment of the Agency

- (a) Tourism Australia and the Agency agree that Tourism Australia will use the Agency to provide PR Services in relation to work that is commissioned by Tourism Australia and is under the control of Tourism Australia.
- (b) Tourism Australia and the Agency agree that Tourism Australia may, at its sole discretion, use the Agency to deliver Ad Hoc PR Services.

2.2 Exclusivity

The Agency agrees that, for the duration of the Term, it will not provide PR Services in the United States, Canada and Brazil to any other national tourism office of any of the following countries:

- (a) Australia (including State or Territory Organisations);
- (b) New Zealand;
- (c) South Africa;
- (d) Italy;
- (e) United Kingdom;
- (f) France;
- (g) Spain; and
- (h) Germany.

2.3 High quality PR Services

The Agency:

- (a) acknowledges that high quality PR Services and strategic advice can contribute significantly to fulfilment of Tourism Australia's objectives; and

- (b) agrees at all times to carry out its obligations under this Agreement with the highest level of professionalism that can be reasonably expected of a leading public relations agency.

2.4 Work volumes

The Agency acknowledges that:

- (a) the requirements of Tourism Australia for the PR Services may vary considerably during the Term and the Agency undertakes to accommodate this requirement for flexibility;
- (b) entry into this Agreement does not guarantee the Agency any specific volume of Tourism Australia public relations work;
- (c) it is not and will not be the only provider of the PR Services to Tourism Australia;
- (d) Tourism Australia may, in its absolute discretion, undertake the PR Services itself or engage one or more agencies to provide the PR Services to it at any time during the Term; and
- (e) nothing in this Agreement prevents Tourism Australia from purchasing the PR Services from any other person at any time.

2.5 Tourism Australia's public image

The Agency must ensure that the Agency and its Representatives provide the PR Services to Tourism Australia in a manner which will not:

- (a) bring Tourism Australia's name into disrepute; or
 - (b) otherwise damage Tourism Australia's reputation or overall public image,
- or threaten to do either of these.

2.6 Co-operation with other agents

- (a) Where requested by Tourism Australia, the Agency must co-operate with any third party Tourism Australia directs the Agency to co-operate with, including another agency or contractor appointed by Tourism Australia to provide PR Services, to ensure the integrated and efficient carrying out of Tourism Australia's operations and provide such reasonable assistance to such other person as Tourism Australia may request.
- (b) If Tourism Australia directs the Agency to co-operate with a third party as set out in clause 2.6(a), Tourism Australia will provide the Agency with details of the third party and Tourism Australia's requirements.

2.7 Value adding and continuous improvement

- (a) The Agency must encourage its Representatives to manifest a proactive approach to providing the PR Services.
- (b) In addition to its obligations under clause 14, the Agency must meet with Tourism Australia as requested by Tourism Australia at any time during the Term to discuss suggestions from either party for areas of continuous improvement that will improve the PR Services.

2.8 Compliance with Tourism Australia policies and procedures

When providing the PR Services, the Agency must comply with Tourism Australia's policies and procedures as notified from time to time in writing by Tourism Australia to the Agency.

2.9 Notification of Conflict of Interest

- (a) If a Conflict of Interest or risk of Conflict of Interest arises, the Agency must notify Tourism Australia of that Conflict of Interest or risk of Conflict of Interest immediately.

- (b) Without limiting clause 2.9(a), if a third party approaches the Agency for the provision of services similar to the PR Services and/or the Agency has reasonable grounds to consider the third party has, or may have, a Conflict of Interest, the Agency must immediately notify Tourism Australia for the purpose of obtaining the consent of Tourism Australia to the Agency providing those services to that third party.
- (c) A breach of clause 2.9(b) by the Agency entitles Tourism Australia to immediately terminate this Agreement by giving notice to the Agency.

3. RELATIONSHIP OF THE PARTIES

3.1 Independent contractor

The Agency is an independent contractor and not an agent, joint venturer, partner or employee of Tourism Australia and, except as expressly provided in this Agreement, Tourism Australia will not be obligated by any agreements, representations or warranties made by the Agency to any person, nor with respect to any other action of the Agency to any person, nor will Tourism Australia be obligated for any damages to any person whether caused by the Agency's negligence or wilful conduct.

3.2 Exclusion of powers

The Agency and Tourism Australia acknowledge and agree that except as expressly provided in this Agreement, neither has the power or authority, directly or indirectly, or through its Representatives, to bind the other party with a third person, or otherwise to enter into a binding relationship or incur any liability for or on behalf of the other party.

4. PROVISION OF THE PR SERVICES

4.1 Obligations of the Agency

- (a) The Agency must provide the PR Services required by Tourism Australia in the manner specified in this Agreement.
- (b) In providing the PR Services, the Agency agrees that it will at all times act in a manner which fully supports Tourism Australia's objectives.
- (c) The Agency must co-operate fully with Tourism Australia and use its best endeavours to ensure that each public relations activity for which the Agency provides PR Services is successful.
- (d) The Agency must ensure that it has obtained all necessary Authorisations required for any activity under the PR Services.
- (e) The Agency must not take any action or make a decision which may adversely affect the function or performance of the PR Services.
- (f) The Agency representative in Los Angeles must be able to attend meetings at Tourism Australia's US office in Los Angeles within 48 hours notice without incurring additional costs associated with travel expenses to attend these meetings.
- (g) The Agency must:
 - (i) immediately notify Tourism Australia if an act or omission of the Agency, its Representatives, the Contractor or the Contractor's Representatives causes a problem or delay that has a material impact on the Agency's ability to provide the PR Services;
 - (ii) work with Tourism Australia and, where relevant, the Contractor, to prevent or circumvent the problem or delay; and
 - (iii) immediately advise the relevant Tourism Australia Project Co-ordinator if the PR Services are unable to be supplied within specified timeframes and advise when the PR Services can be supplied.

4.2 Delivery timeframes

- (a) The Agency must provide the PR Services requested by Tourism Australia in accordance with any applicable delivery timeframes or prior notified deadlines; subject to force majeure and Section 4.2(c) below.
- (b) If requested by Tourism Australia, the Agency must provide a report to Tourism Australia detailing all instructions given and/or Briefs submitted to the Agency and the progress of the Agency in meeting its obligations in respect of those instructions and/or Briefs, within 2 Business Days of receiving the request from Tourism Australia. For the avoidance of doubt, Tourism Australia may during the Term request as many reports as it considers appropriate.
- (c) Tourism Australia acknowledges that the successful and timely rendering of the services and the successful development of the Materials to be provided hereunder will require the good faith cooperation of Tourism Australia. Accordingly, Tourism Australia will fully cooperate with Agency, including, without limitation, by providing Agency with all information necessary or appropriate and relevant to the Agency's performance as reasonably required by Agency, and providing prompt review of Materials submitted by Agency. Agency shall not be liable for any delays caused by Tourism Australia's actions or inactions hereunder, including, without limitation, Tourism Australia's requests for changes in the scope of services to be provided hereunder.

4.3 Clarification

- (a) Without limiting Tourism Australia's obligations hereunder, the Agency is solely responsible for seeking clarification from Tourism Australia about any matter relating to Tourism Australia's instructions, contained in an AOP, a Brief or relating to the provision of PR Services under this Agreement which the Agency or the Contractor believes may be unclear or ambiguous.
- (b) The Agency must seek clarification under this clause 4.3 prior to the deadline specified in Tourism Australia's instructions aligned to an AOP or a Brief. The Agency must deal with the Tourism Australia Project Co-ordinator in respect of any clarification required by the Agency.
- (c) The Agency may ask any questions about the delivery of PR Services related to an AOP or a Brief at any time during its delivery of the PR Services by submitting the question to the Tourism Australia Project Co-ordinator.

5. RETAINER-BASED PR SERVICES

5.1 Retainer-based PR Services

- (a) The Agency is required to deliver an Annual PR Strategy that supports Tourism Australia's America's Annual Operating Plan as detailed in Schedule 1, Requirement 1.
- (b) The Agency is required to deliver the Day-to-Day Activity Management as detailed in Schedule 1, Requirement 1.
- (c) In delivering these Retainer-based PR Services the Agency will be bound by the Retainer-based Fee Structure and Project Delivery Timeframe that it has quoted to deliver these Retainer-based PR Services and as outlined in Schedule 5.

5.2 Work Volumes Acknowledgement

The Agency acknowledges and agrees the obligations regarding work volumes in clause 2.4 also apply in respect of the Retainer-based PR Services.

5.3 Reporting

- (a) The Agency must provide the reports set out in Schedule 2 in respect of Retainer-based PR Services delivered under this clause 5.

- (b) The Agency must provide a schedule that details how it will report against the delivery of any Retainer-based PR Campaign. It must then provide the relevant reports as set out under that schedule.

5.4 Request for approval

- (a) All requests for approval from the Agency must, in the first instance and unless otherwise specified in this Agreement, be submitted by the Agency to the Tourism Australia Project Co-ordinator.
- (b) The relevant Tourism Australia Project Co-ordinator will be responsible for obtaining all approvals from Tourism Australia required under this Agreement.
- (c) All approvals by Tourism Australia will be made in writing.
- (d) Approval notified by the relevant Tourism Australia Project Co-ordinator will be taken by the Agency to be a final approval only if the Agency has obtained from Tourism Australia an approval in writing and that approval has been granted by Tourism Australia in accordance with Tourism Australia's delegation policies.

5.5 Requirement for approval

- (a) The Agency must submit to Tourism Australia for approval all Retainer-based PR Services, cost estimates, quotations, amendments, change orders, and any other proposal or quote for PR Services made at each stage of a PR Campaign. The Agency must not move forward to the next stage of the delivery of a Retainer-based PR Campaign or any other proposal unless and until Tourism Australia has granted approval under this clause 5.
- (b) If Tourism Australia requires that a Retainer-based PR Service or related Retainer-based PR Campaign be amended, and that the PR Campaign be resubmitted by the Agency for approval by Tourism Australia before the Agency can move onto the next stage of PR Service delivery.
- (c) The Agency must obtain the prior written approval of Tourism Australia before it acts or proceeds to act in any matter relating to the Retainer-based PR Services, commits to incurring any PR Charges in respect of the PR Services, or doing any other thing for which prior approval from Tourism Australia is required under this Agreement.
- (d) The Agency must not represent or purport to represent Tourism Australia, or express or purport to express views or opinions on behalf of Tourism Australia without Tourism Australia's prior written approval.

5.6 Approval by Tourism Australia

- (a) Tourism Australia may, in its absolute discretion, approve a Retainer-based PR Campaign, expenditure or any other proposal required under this Agreement.
- (b) In granting an approval under this clause 5, Tourism Australia may, in its absolute discretion, require further information from the Agency, impose conditions on the approval, require amendments to be made before approval is granted or do any other thing it considers appropriate in the circumstances.
- (c) Where Tourism Australia approves a total cost estimate provided by the Agency in respect of the Retainer-based PR Services, the Agency agrees that it will comply with the relevant total cost estimate and that it will be subject at all times to the terms of this Agreement.

5.7 Amendment after approval granted

- (a) The Agency must advise Tourism Australia of any changes in the estimated PR Charges or any changes in plans, schedules or work in progress previously approved in writing by Tourism Australia before further costs are incurred.

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- (b) Tourism Australia will not be under any obligation to accept a revised costing under clause 5.7(a), but will not unreasonably withhold its consent if the revised estimates are attributable to any variation in Tourism Australia's requirements.
- (c) Where the revised estimates are attributable to any variation in Tourism Australia's requirements, Tourism Australia will respond to any request from the Agency for approval of the change to the estimated PR Charges within 3 Business Days. The Agency must not implement any change in costings unless and until Tourism Australia has granted approval.

5.8 Approval not granted

- (a) Subject to clause 5.8(b), Tourism Australia may refuse to approve any proposal submitted to it if that proposal:
 - (i) is not, in Tourism Australia's reasonable opinion, an accurate and/or appropriate interpretation of Tourism Australia's instructions or the Retainer-based PR Service (as the case may be);
 - (ii) does not in the reasonable opinion of Tourism Australia, meet Tourism Australia's objectives; or
 - (iii) is, in the opinion of Tourism Australia, defamatory, libellous, illegal, indecent, misleading or otherwise prejudicial to Tourism Australia or Australia.
- (b) Tourism Australia must give the Agency a reasonable opportunity to remedy any unacceptable proposal.
- (c) The Agency must use its best endeavours to work with Tourism Australia to remedy any unacceptable proposal.
- (d) If the Agency is unable to provide the Retainer-based PR Services in a way that is acceptable to Tourism Australia within a reasonable timeframe, Tourism Australia may exercise its rights under clause 24.

5.9 Interpretation

For the purposes of this Agreement, **approval** means written approval that is granted in the following ways:

- (a) by letter on Tourism Australia letterhead and bearing the signature of the Tourism Australia Project Co-ordinator;
- (b) by facsimile on Tourism Australia letterhead and bearing the signature of the Tourism Australia Project Co-ordinator;
- (c) by the Tourism Australia Project Co-ordinator's signature on standard agency public relations charge estimate documentation;
- (d) by email emanating from the personal email address of the Tourism Australia Project Co-ordinator; or
- (e) oral approval given by the Tourism Australia Project Co-ordinator provided it is in circumstances where time does not permit written approval, and the oral approval is confirmed within 2 Business Days by written confirmation from Tourism Australia.

6. FEE-BASED PR SERVICES

6.1 Annual PR Strategy and PR Campaigns

- (a) The Agency is required to provide a fixed price quote to deliver the PR Campaigns outlined in the Agency's Annual PR Strategy for the Americas and as detailed in Schedule 1, Requirement 1. Upon approval to proceed, the Agency will be bound by the PR Services Fees and Project Delivery Timeframe it has quoted to deliver these PR Campaigns.

- (b) Tourism Australia will provide written authority to the Agency to proceed with one or more of the PR Campaigns. This written authority will outline the fee payment structure for the delivery of the PR Campaigns as outlined in Clause 12.
- (c) The Agency must not proceed to deliver any aspect of a Fee-based PR Service unless a written authority to commence has been received from Tourism Australia. If the Agency commences work on a Fee-based PR Service without written authority in accordance with this clause 6.1, Tourism Australia will not reimburse the Agency for any costs incurred.
- (d) Fee-based PR Services will be reviewed annually in line with the delivery of the Annual PR Strategy as outlined in Schedule 1, Requirement 1.

6.2 Influencer Program Strategy

- (a) The Agency is required to provide a quote to deliver an additional Influencer Program strategy as detailed in Schedule 1, Ad Hoc Projects and/or Fee-Based PR Services, 1.1 (a). Upon approval to proceed, the Agency will be bound by the PR Services Fees and Project Delivery Timeframe it has quoted to deliver this Strategy.

6.3 Work Volumes Acknowledgement

The Agency acknowledges and agrees the obligations regarding work volumes in clause 2.4 also apply in respect of the Retainer-based PR Services.

6.4 Reporting

The Agency must provide a schedule that details the reports it will provide to Tourism Australia in respect to the delivery of Fee-based PR Services delivered under this clause 6.

6.5 Request for approval

- (a) All requests for approval from the Agency must, in the first instance and unless otherwise specified in this Agreement, be submitted by the Agency to the Tourism Australia Project Co-ordinator.
- (b) The relevant Tourism Australia Project Co-ordinator will be responsible for obtaining all approvals from Tourism Australia required under this Agreement.
- (c) All approvals by Tourism Australia will be made in writing.
- (d) Approval notified by the relevant Tourism Australia Project Co-ordinator will be taken by the Agency to be a final approval only if the Agency has obtained from Tourism Australia an approval in writing and that approval has been granted by Tourism Australia in accordance with Tourism Australia's delegation policies.

6.6 Requirement for approval

- (a) The Agency must submit to Tourism Australia for approval all Fee-based PR Services, cost estimates, quotations, amendments, change orders, and any other proposal or quote made at each stage of a PR Campaign. The Agency must not move forward to the next stage of a PR Campaign or any other proposal unless and until Tourism Australia has granted approval under this clause 6.
- (b) If Tourism Australia requires that a PR Campaign or related proposal be amended, the PR Campaign or proposal must be resubmitted by the Agency for approval by Tourism Australia before the Agency can move onto the next stage of the PR Campaign or proposal.
- (c) The Agency must obtain the prior written approval of Tourism Australia before it acts or proceeds to act in any matter relating to a Fee-based PR Service or doing any other thing for which prior approval from Tourism Australia is required under this Agreement.

- (d) The Agency must not represent or purport to represent Tourism Australia, or express or purport to express views or opinions on behalf of Tourism Australia without Tourism Australia's prior written approval.

6.7 Approval by Tourism Australia

- (a) Tourism Australia may, in its absolute discretion, approve a PR Campaign, expenditure or any other proposal required under this Agreement or quote for Fee-based PR Service made at each stage of a PR Campaign or related proposal.
- (b) In granting an approval under this clause 6, Tourism Australia may, in its absolute discretion, require further information from the Agency, impose conditions on the approval, require amendments to be made before approval is granted or do any other thing it considers appropriate in the circumstances.
- (c) Where Tourism Australia approves a total cost estimate provided by the Agency in respect of a PR Campaign and/or the Fee-based PR Service, the Agency agrees that it will comply with the relevant total cost estimate and that it will be subject at all times to the terms of this Agreement.

6.8 Amendment after approval granted

- (a) The Agency must advise Tourism Australia of any changes in the estimated pricing or any changes in any PR Campaign, schedules or work in progress previously approved in writing by Tourism Australia before further costs are incurred.
- (b) Tourism Australia will not be under any obligation to accept a revised costing under clause 7.8(a), but will not unreasonably withhold its consent if the revised estimates are attributable to any variation in Tourism Australia's requirements.
- (c) Where the revised estimates are attributable to any variation in Tourism Australia's requirements, Tourism Australia will respond to any request from the Agency for approval of the change to the estimated charges within 3 Business Days. The Agency must not implement any change in costings unless and until Tourism Australia has granted approval.

6.9 Approval not granted

- (a) Subject to clause 7.9(b), Tourism Australia may refuse to approve any proposal submitted to it if that proposal:
 - (i) is not, in Tourism Australia's reasonable opinion, an accurate and/or appropriate interpretation of the Brief (as the case may be);
 - (ii) does not in the reasonable opinion of Tourism Australia, meet Tourism Australia's objectives; or
 - (iii) is, in the opinion of Tourism Australia, defamatory, libellous, illegal, indecent, misleading or otherwise prejudicial to Tourism Australia or Australia.
- (b) Tourism Australia must give the Agency a reasonable opportunity to remedy any unacceptable proposal.
- (c) The Agency must use its best endeavours to work with Tourism Australia to remedy any unacceptable proposal.
- (d) If the Agency is unable to provide the Ad Hoc PR Service in a way that is acceptable to Tourism Australia within a reasonable timeframe, Tourism Australia may exercise its rights under clause 24.

6.10 Interpretation

For the purposes of this Agreement, **approval** means written approval that is granted in the following ways:

- (a) by letter on Tourism Australia letterhead and bearing the signature of the Tourism Australia Project Co-ordinator;
- (b) by facsimile on Tourism Australia letterhead and bearing the signature of the Tourism Australia Project Co-ordinator;
- (c) by the Tourism Australia Project Co-ordinator's signature on standard agency public relations charge estimate documentation;
- (d) by email emanating from the personal email address of the Tourism Australia Project Co-ordinator; or
- (e) oral approval given by the Tourism Australia Project Co-ordinator provided it is in circumstances where time does not permit written approval, and the oral approval is confirmed within 2 Business Days by written confirmation from Tourism Australia.

7. AD-HOC PR SERVICES

7.1 Generally

- (a) The Agency may be required to deliver PR Campaigns and activities in connection with Tourism Australia's public relations campaigns in the Americas on an ad hoc basis.
- (b) Ad hoc PR Services will be reviewed and assessed on a case by case basis to determine the capabilities of the Agency and the Agency's cost effectiveness. A competitive pitch may be used to determine the best provider for Ad Hoc PR Services.

7.2 Ad Hoc PR Service Briefs

- (a) Following receipt of a written Brief from Tourism Australia, the Agency will provide a fixed price quote for the delivery of an Ad Hoc PR Service within 14 Business Days.
- (b) The Agency must not proceed to deliver any aspect of an Ad Hoc PR Service unless a written authority to commence has been received from Tourism Australia. If the Agency commences work on an Ad Hoc PR Service without written authority in accordance with this clause 7.2(b), Tourism Australia will not reimburse the Agency for any costs incurred.

7.3 Work Volumes Acknowledgement

The Agency acknowledges and agrees the obligations regarding work volumes in clause 2.4 also apply in respect of the Retainer-based PR Services.

7.4 Reporting

The Agency must provide a schedule that details the reports it will provide to Tourism Australia in respect to the delivery of Ad Hoc PR Services delivered under this clause 7.

7.5 Request for approval

- (a) All requests for approval from the Agency must, in the first instance and unless otherwise specified in this Agreement, be submitted by the Agency to the Tourism Australia Project Co-ordinator.
- (b) The relevant Tourism Australia Project Co-ordinator will be responsible for obtaining all approvals from Tourism Australia required under this Agreement.
- (c) All approvals by Tourism Australia will be made in writing.
- (d) Approval notified by the relevant Tourism Australia Project Co-ordinator will be taken by the Agency to be a final approval only if the Agency has obtained from Tourism Australia an approval in writing and that approval has been granted by Tourism Australia in accordance with Tourism Australia's delegation policies.

7.6 Requirement for approval

- (a) The Agency must submit to Tourism Australia for approval all Ad Hoc PR Services, cost estimates, quotations, amendments, change orders, and any other proposal or quote made at each stage of a PR Campaign. The Agency must not move forward to the next stage of a PR Campaign or any other proposal unless and until Tourism Australia has granted approval under this clause 7.
- (b) If Tourism Australia requires that a PR Campaign or related proposal be amended, the PR Campaign or proposal must be resubmitted by the Agency for approval by Tourism Australia before the Agency can move onto the next stage of the PR Campaign or proposal.
- (c) The Agency must obtain the prior written approval of Tourism Australia before it acts or proceeds to act in any matter relating to an Ad Hoc PR Service or doing any other thing for which prior approval from Tourism Australia is required under this Agreement.
- (d) The Agency must not represent or purport to represent Tourism Australia, or express or purport to express views or opinions on behalf of Tourism Australia without Tourism Australia's prior written approval.

7.7 Approval by Tourism Australia

- (a) Tourism Australia may, in its absolute discretion, approve a PR Campaign, expenditure or any other proposal required under this Agreement or quote for Ad Hoc PR Service made at each stage of a PR Campaign or related proposal.
- (b) In granting an approval under this clause 7, Tourism Australia may, in its absolute discretion, require further information from the Agency, impose conditions on the approval, require amendments to be made before approval is granted or do any other thing it considers appropriate in the circumstances.
- (c) Where Tourism Australia approves a total cost estimate provided by the Agency in respect of a PR Campaign and/or the Ad Hoc PR Service, the Agency agrees that it will comply with the relevant total cost estimate and that it will be subject at all times to the terms of this Agreement.

7.8 Amendment after approval granted

- (a) The Agency must advise Tourism Australia of any changes in the estimated pricing or any changes in any PR Campaign, schedules or work in progress previously approved in writing by Tourism Australia before further costs are incurred.
- (b) Tourism Australia will not be under any obligation to accept a revised costing under clause 7.8(a), but will not unreasonably withhold its consent if the revised estimates are attributable to any variation in Tourism Australia's requirements.
- (c) Where the revised estimates are attributable to any variation in Tourism Australia's requirements, Tourism Australia will respond to any request from the Agency for approval of the change to the estimated charges within 3 Business Days. The Agency must not implement any change in costings unless and until Tourism Australia has granted approval.

7.9 Approval not granted

- (a) Subject to clause 7.9(b), Tourism Australia may refuse to approve any proposal submitted to it if that proposal:
 - (i) is not, in Tourism Australia's reasonable opinion, an accurate and/or appropriate interpretation of the Brief (as the case may be);
 - (ii) does not in the reasonable opinion of Tourism Australia, meet Tourism Australia's objectives; or

- (iii) is, in the opinion of Tourism Australia, defamatory, libellous, illegal, indecent, misleading or otherwise prejudicial to Tourism Australia or Australia.
- (b) Tourism Australia must give the Agency a reasonable opportunity to remedy any unacceptable proposal.
- (c) The Agency must use its best endeavours to work with Tourism Australia to remedy any unacceptable proposal.
- (d) If the Agency is unable to provide the Ad Hoc PR Service in a way that is acceptable to Tourism Australia within a reasonable timeframe, Tourism Australia may exercise its rights under clause 24.

7.10 Interpretation

For the purposes of this Agreement, **approval** means written approval that is granted in the following ways:

- (a) by letter on Tourism Australia letterhead and bearing the signature of the Tourism Australia Project Co-ordinator;
- (b) by facsimile on Tourism Australia letterhead and bearing the signature of the Tourism Australia Project Co-ordinator;
- (c) by the Tourism Australia Project Co-ordinator's signature on standard agency public relations charge estimate documentation;
- (d) by email emanating from the personal email address of the Tourism Australia Project Co-ordinator; or
- (e) oral approval given by the Tourism Australia Project Co-ordinator provided it is in circumstances where time does not permit written approval, and the oral approval is confirmed within 2 Business Days by written confirmation from Tourism Australia.

8. CONTRACTORS

8.1 Use of Contractors

The Agency may subcontract any of the PR Services to a Contractor provided that:

- (a) the Agency has requested approval from Tourism Australia and Tourism Australia has specifically approved the use by the Agency of that third party as a Contractor for specific PR Services;
- (b) the Agency has provided a written quote for all services to be delivered by a Contractor; and
- (c) the Agency undertakes to ensure that the Contractor adheres to all the relevant terms and conditions of this Agreement as if such terms and conditions applied directly to them.

8.2 Conditions for the use of Contractors

- (a) The work of all Contractors must be co-ordinated and managed directly by the Agency and all invoices raised by any Contractor will be for the sole account of the Agency (subject to Tourism Australia making payment to Agency as required hereunder).
- (b) If the Contractor being proposed is a related body corporate of the Agency, the Agency must declare its interests in the Contractor to Tourism Australia when seeking approval for that Contractor's engagement. The Agency must not commission any services from the Contractor in these circumstances unless and until approval is granted by Tourism Australia in accordance with clauses 5, 6 and 7.

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- (c) When the Agency subcontracts to a Contractor, the Agency must pass on to Tourism Australia all discounts, allowances, concessions and/or credits for any and all special arrangements obtained by the Agency from the Contractor in connection with the performance of the PR Services under this Agreement. The Agency must not accept or retain any incentive payments relating to the commissioning of Contractors.
- (d) If in Tourism Australia's reasonable opinion, it considers that the work of any Contractor in relation to the PR Services is unsatisfactory, Tourism Australia may require the Agency to cease subcontracting any further elements of the PR Services and/or to that Contractor. On receipt of notification from Tourism Australia to this effect, the Agency must immediately cease to use the Contractor in respect of any further elements of the PR Services and/or. Tourism Australia may direct the Agency to commission another Contractor to undertake the remaining elements of the PR Services or may undertake this work itself.
- (e) If the Agency wishes to subcontract at any time in the future any element of the PR Services to a Contractor in respect to which Tourism Australia has exercised its rights under clause 8.2(d), the Agency must first obtain approval from Tourism Australia under clauses 5, 6 and/or 7.
- (f) Contractors and their Representatives (where relevant) must not be named as:
 - (i) a proscribed person or entity under the *Charter of the United Nations Act 1945* (Cth) and/or under the *Charter of United Nations (Terrorism and Dealing with Assets) Regulations 2002* (Cth); and/or
 - (ii) not complying with the *Equal Opportunity for Women in the Workplace Act 1999* (Cth).

8.3 Agency responsible for work performed by Contractors

- (a) The Agency remains fully responsible for the performance of all work in accordance with this Agreement notwithstanding the engagement of a Contractor.
- (b) The Agency is responsible for:
 - (i) all acts of its Contractors and their Representatives (including any work performed by its Contractors or their employees); and
 - (ii) all omissions of its Contractors and their Representatives (including any failure by its Contractors or their employees to perform work), as if those acts and omissions were acts and omissions of the Agency itself.
- (c) After receiving notice from Tourism Australia requiring the Agency to remove any of its Contractors, the Agency must, at its own cost, immediately cease to use the Contractors in the provision of PR Services.
- (d) Notwithstanding the foregoing, in the event that Agency, with Tourism Australia's approval, engages a third party, such as a spokesperson, venue, media tour operator or other vendor (collectively "Vendor") to provide services or goods in connection with this Agreement but ancillary to the PR Services being provided directly by Agency, Agency will use commercially reasonable efforts to guard against any loss to Tourism Australia through failure of Vendors to properly execute their commitments, but in no event shall Agency be held responsible for any such failure absent Agency's negligence or wilful misconduct.

9. GENERAL OBLIGATIONS

The Agency must:

- (a) carry out the PR Services in accordance with the requirements of Tourism Australia and the terms of this Agreement;

- (b) observe, and ensure that all PR Services provided under this Agreement comply with any rules, recommendations, guidelines, codes of conduct and any other standard that is relevant to the public relations industries or the PR Services in the Americas;
- (c) obtain, and comply with, all necessary Authorisations in the Americas;
- (d) not use Tourism Australia's name or the existence of its relationship with Tourism Australia to procure for itself or any of its Representatives any benefits (including commissions, discounted or free travel, rebates and gifts);
- (e) not disclose the existence of this Agreement without the prior written approval of Tourism Australia (except as necessary to provide the services);
- (f) comply with the requirements and obligations in Tourism Australia's Guidelines for Overseas Representatives set out in Schedule 12.
- (g) to the best of its ability, respond to telephone and/or email inquiries from Tourism Australia within 8 hours of receiving the inquiry;
- (h) to the best of its ability, guard Tourism Australia against any loss to Tourism Australia arising out of loss, damage or destruction to any negatives, digital images, video tapes, photographs or other Materials in the possession of the Agency, Contractors or their Representatives that are used, or will be used, for the purpose of providing the PR Services;
- (i) maintain up to date records of all Materials in the possession of the Agency, Contractors or their Representatives which are used or to be used for the purpose of providing the PR Services (including location) and provide a copy of these records to Tourism Australia on a quarterly basis from the Commencement Date;
- (j) when requested by Tourism Australia, procure the delivery within 5 Business Days to Tourism Australia of all Materials in the possession of the Agency, Contractors or their Representatives which are used or to be used for the purpose of providing the PR Services;
- (k) not undertake any PR Services or, prepare any PR Material or publicity or cause publication of any advertisement or article which Agency knows (or should reasonably know) is or would be false, misleading, deceptive, indecent, libellous, defamatory, unlawful or otherwise prejudicial to Tourism Australia's interests;
- (l) keep informed, and inform Tourism Australia about all new technology and resources that could bring about efficiencies, lower costs or improve the Agency's provision of the PR Services under this Agreement, and where appropriate, adopt and make available to Tourism Australia any new technology and resources as soon as reasonably practicable;
- (m) retain an office in the locations in which the PR Services are being provided to Tourism Australia;
- (n) notify Tourism Australia before it opens or closes the Agency Office(s) in clause 9(m);
- (o) notify Tourism Australia of any proposed restructuring of the Agency that may affect the provision of PR Services or Tourism Australia's relationship with the Agency;
- (p) not be named as:
 - (i) a proscribed person or entity under the *Charter of the United Nations Act 1945* (Cth) and/or under the *Charter of United Nations (Terrorism and Dealing with Assets) Regulations 2002* (Cth); and/or
 - (ii) not complying with the *Equal Opportunity for Women in the Workplace Act 1999* (Cth)

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- (q) comply with:
 - (i) the Commonwealth Protective Security Manual and Tourism Australia's Security Instructions; and
 - (ii) any directions issued by Tourism Australia in relation to security;
- (r) co-operate and work closely with all other marketing service agencies engaged by Tourism Australia; and
- (s) provide to Tourism Australia confirmation in writing of all substantive matters discussed at meetings or during telephone conversations between Tourism Australia and the Agency, within 3 Business Days following the meeting or telephone conversation.

Tourism Australia must:

- (t) review and approval Materials produced by Agency prior to authorizing Agency to distribute or publish same to the media or public, and shall be responsible for ensuring that all such Materials and descriptions and claims contained therein with regard to Australia are accurate, complete and comply with all laws and regulations applicable to Tourism Australia.
- (u) Client agrees to review and approve materials in a timely fashion.

10. RECORDS

10.1 Requirement to keep records

The Agency must:

- (a) maintain full and accurate records of all expenses it incurs and PR Services it provides to Tourism Australia under this Agreement, and any other record or information relevant to the PR Services provided under this Agreement;
- (b) ensure that each Contractor keeps and maintains full and accurate records of all expenses it incurs and PR Services it provides to Tourism Australia under this Agreement, and any other record or information relevant to the PR Services provided under this Agreement; and
- (c) ensure that each Contractor makes available the records referred to in clause 10.1(b) on the same terms as the Agency is required to make records available to Tourism Australia under this clause 10.

10.2 Access to records

- (a) The Agency will comply, and will ensure that each Contractor complies with any request by Tourism Australia for the provision to Tourism Australia of copies of the records referred to in clause 10.1.
- (b) The Agency grants, and will ensure that each Contractor grants, to Tourism Australia, its auditor and any of their Representatives, the right to enter their premises and to access and take electronic or hard copies of the records referred to in clause 10.1:
 - (i) in connection with any audit conducted in accordance with clause 10.2 or designed to enable Tourism Australia to verify the Agency's compliance with this Agreement and any invoices submitted by the Agency;
 - (ii) to enable Tourism Australia to comply with its legal and other regulatory obligations, including its statutory obligations in relation to freedom of information; and
 - (iii) for any other reason.

10.3 Audit

- (a) The Agency agrees to the appointment of an auditor to review the Agency's accounting and financial records relevant to its activities with Tourism Australia for the purposes of enabling Tourism Australia to verify the Agency's compliance with this Agreement and any invoices submitted by the Agency.
- (b) If Tourism Australia wishes to conduct an audit, it will provide the Agency with at least 14 Business Days written notice. It is the Agency's responsibility to notify the Contractor of Tourism Australia's request.
- (c) Tourism Australia will, in its sole discretion, appoint a duly qualified professional to be the auditor. Notwithstanding, any auditor must sign Agency's standard non-disclosure agreement prior to being given access to Agency's books and records.
- (d) The Agency agrees to provide, and agrees to ensure that the Contractor provides reasonable assistance to any auditor appointed by Tourism Australia to ensure that the audit is conducted in a professional, timely and efficient manner.
- (e) It is acknowledged that payroll records, personnel records or Agency profit and loss statements are not relevant to the audit.

11. STAFFING

11.1 Key Personnel

- (a) The Agency must establish and maintain an identified team of personnel who will be principally responsible for the performance of the PR Services under this Agreement.
- (b) The identity, position title and proposed level of work to be performed by each of the proposed Key Personnel, as well as details about staffing levels, will be set out in Schedule 8 and will be reviewed annually by the Agency and Tourism Australia. If required, the details in Schedule 8 will be adjusted in accordance with Tourism Australia's requirements.
- (c) The Agency will ensure that all identified Key Personnel are actively involved in the provision of the PR Services.
- (d) So far as it is practicable to do so, the Agency will allocate Key Personnel to a specific Ad Hoc PR Services if so requested by Tourism Australia in its instructions or in a Brief.
- (e) The Agency will notify Tourism Australia if:
 - (i) the Agency is proposing to add a new team member to the Key Personnel team; and
 - (ii) any Key Personnel cease employment with the Agency.
- (f) If for any reason Tourism Australia is not satisfied with the quality of work or level of service that it is receiving from the Agency, Tourism Australia will have the right to request that the Tourism Australia account be managed by the Agency's most senior public relations staff member or manager until a suitable replacement can be found. If Tourism Australia exercises its rights under this clause 11.1(f), the Agency agrees that it will not charge Tourism Australia any additional fees or disbursements.

11.2 Tourism Australia's right to approve Agency staff working on the Tourism Australia account

- (a) The Agency must, in providing PR Services to Tourism Australia, only use persons who have been approved by Tourism Australia to work on the Tourism Australia account.
- (b) Tourism Australia may refuse to approve a person engaged by the Agency to work on the Tourism Australia account without giving any reasons to the Agency.

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- (c) Tourism Australia may withdraw its approval in respect of a person engaged by the Agency to work on the Tourism Australia account at any time, without notice and without giving reasons to the Agency.
- (d) If Tourism Australia withdraws its approval in respect of a person engaged by the Agency to work on the Tourism Australia account, the Agency must replace that person with another team member, once Tourism Australia has given its approval.

12. FEES

12.1 Generally

In consideration of the provision of the PR Services under this Agreement, Tourism Australia shall pay fees to the Agency pursuant to this clause 12.

12.2 Retainer-based PR Services Fee

Tourism Australia shall pay to the Agency the Retainer-based PR Services Fee in accordance with Part A of Schedule 3, subject to review in accordance with the provisions of clause 12.8.

12.3 Fee-based PR Services Fee

- (a) Tourism Australia shall pay the Agency all approved fees relating to the delivery of PR Services that support the delivery of the Annual PR Strategy.
- (b) Tourism Australia shall pay the Agency all approved fees relating to the delivery of an Influencer Program Strategy in accordance with Part B of Schedule 3.

12.4 Ad Hoc PR Service Fees

Tourism Australia shall pay to the Agency Ad Hoc PR Services Fees in accordance with Part C of Schedule 3.

12.5 Invoices

- (a) Unless otherwise notified by Tourism Australia the Agency must submit all invoices to Tourism Australia's US office.
- (b) For Fee-based PR Services and Ad-hoc PR Services Tourism Australia agrees to pay (i) a digital media services fee equal to 0.3% of the work and (ii) a telephone/network charge equal to 1.75% of the work. These charges do not apply to Retainer-based PR Services fees. Teleconference costs will be billed separately and in addition to the above.
- (c) Invoices for payment must:
 - (i) be submitted monthly by the 10th of the following month for the work performed in the month prior, by the Agency to Tourism Australia subject to the requirements set out in clause 12.5(a);
 - (ii) must contain all supporting material relating to the PR Charges contained in the invoice which may be reasonably required by Tourism Australia to reconcile the invoices against the specified charges;
 - (iii) not exceed approved signed estimate levels;
 - (iv) provide details of the estimated cost for approved projects within each Advertising Campaign, amounts previously invoiced and the cost of the Advertising Campaign to date; and
 - (v) include any other information reasonably requested by Tourism Australia from time to time.
- (d) The Retainer-based PR Services, Fee-based PR Services and Ad Hoc PR Services must be invoiced separately. Retainer-based PR Services invoices will be sent at the beginning of the month when services are expected to be performed. Retainer-based PR

Services invoices will be non-reconcilable i.e. will not be reconciled against actual hours worked.

- (e) The Agency will invoice Tourism Australia in the local currency of where the PR Services are delivered except for Brazil which will be invoiced in US dollars. Tourism Australia will not be responsible for any inter-agency consolidation of billing which may result in foreign exchange gains/losses.

12.6 End of financial year reconciliations

- (a) The Agency must submit to Tourism Australia a reconciliation of all accounts for the prior one year period to enable Tourism Australia to finalise its end of financial year processes.
- (b) A reconciliation under clause 12.6(a) must be submitted to Tourism Australia on 15 June of each year of the Term. If 15 June falls on a day that is not a Business Day, the reconciliation must be submitted to Tourism Australia on the next Business Day after 15 June of the relevant year. The reconciliation will not apply to the Retainer-based PR Services Fees.

12.7 Payment terms

- (a) Tourism Australia will pay the:
 - (i) Retainer-based PR Services Fees for each Contract Year in equal monthly instalments;
 - (ii) Fee-based PR Services Fees for the Contract Year as agreed between Tourism Australia and the Agency; and/or
 - (iii) Ad Hoc PR Service Fees as agreed between Tourism Australia and the Agency.
- (b) Subject to the PR Services complying in all respects with the terms of this Agreement, Tourism Australia must pay all invoices on or before 30 days after receipt of the invoice.
- (c) Tourism Australia will pay all fees invoiced by the Agency in United States Dollars (USD) for United States and Brazil work, and Canadian Dollars (CAD) for Canadian work.
- (d) Material retrospective invoices or adjustments will not be accepted by Tourism Australia for payment after 120 days of the PR Services or any PR Materials being delivered to the Agency unless agreed otherwise by Tourism Australia.
- (e) All residual invoices and/or adjustments must be submitted to Tourism Australia by the Agency on or before 30 June.
- (f) Tourism Australia reserves the right to withhold payment of any invoice which is not rendered in accordance with this Agreement and will, on receipt of such invoice, notify the Agency in writing as soon as practicable of the reason for withholding payment.

12.8 Review of PR Services Fees

- (a) The Agency acknowledges and agrees that:
 - (i) the level of PR Services commissioned by Tourism Australia pursuant to this Agreement may fluctuate during the Term;
 - (ii) Tourism Australia does not make any representations or guarantees about the level of PR Services which may be commissioned by Tourism Australia pursuant to this Agreement;
 - (iii) the level of PR Services commissioned by Tourism Australia pursuant to this Agreement during any one year of the Term is in no way indicative of the level PR Services Tourism Australia may commission pursuant to this Agreement for any other year of the Term; and
 - (iv) Tourism Australia retains the right to vary the PR Services Fees in respect of each year of the Term of this Agreement.

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- (b) The PR Services Fees for each year of the Term of this Agreement (with the exception of the first year) will be determined by Tourism Australia on a yearly basis, taking into consideration a number of factors, including but not limited to:
 - (i) Tourism Australia's requirements in relation to PR Services for the upcoming year; and
 - (ii) the performance of the Agency in the preceding year as measured against the performance indicators in Schedule 7.
- (c) Where appropriate, Tourism Australia may request the Agency to participate in Tourism Australia's review of the PR Services.
- (d) To the extent that the parties undertake to negotiate the outcome of Tourism Australia's review of the PR Services Fees under this clause 12.8, the Agency agrees to enter into and conduct negotiations in good faith.

12.9 Disputes

- (a) If Tourism Australia disputes all or any part of an invoice, it must notify the Agency of the dispute within 14 days of the date of receipt of the invoice, clearly setting out the reasons for the dispute. Undisputed portions of any invoice shall be paid as set forth herein.
- (b) The Agency must respond in writing to Tourism Australia's notice under clause 12.9(a), giving its justification for the disputed amount within 14 days of receipt of Tourism Australia's notice. If the Agency does not reply in writing within 14 days, payment will be delayed until the Agency responds as required by this clause 12.9(b).
- (c) If Tourism Australia does not accept the Agency's justification, the parties will meet to discuss the disputed amount and attempt to resolve the dispute in accordance with the procedure set out in clauses 28.2(a) to 28.2(c).

12.10 Taxes and duties

- (a) The Agency must pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement.
- (b) In this clause 12.10, the following terms have the meanings given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth):
 - (i) consideration;
 - (ii) GST;
 - (iii) input tax credit;
 - (iv) supply;
 - (v) taxable supply; and
 - (vi) tax invoice.
- (c) The PR Services Fees, and all other fees paid for any supply made under this Agreement are exclusive of any locally based goods and services and sales taxes imposed on the supply.
- (d) If one party (the supplier) makes a taxable supply to the other party (the recipient) under this Agreement, on receipt of an invoice from the supplier, the recipient must pay without set-off an additional amount to the supplier equal to the any locally based goods and services and sales taxes imposed on the relevant supply.
- (e) The Agency may not claim from Tourism Australia any sum in relation to which it may claim either an input tax credit or any other amount from any other source which may reduce that sum.

13. APPROVAL OF TRAVEL EXPENSES

- 13.1 Travel expenses that do not fall within the PR Services Fees may be reimbursed by Tourism Australia in accordance with the Travel Policy in Schedule 11.
- 13.2 All travel expenses claimed must be supported by appropriate documentary evidence (for example, receipts and invoices).
- 13.3 Where the Agency engages a third party in relation to the PR Services, Tourism Australia will reimburse the cost of the travel in accordance with the Travel Policy in Schedule 11.

14. REPORTING AND MEETINGS

14.1 Progress reports

At Tourism Australia's request, the Agency must provide to Tourism Australia a written progress report for the delivery of PR Services in the form and within the timeframe specified by Tourism Australia from time to time.

14.2 Review of resourcing

- (a) The Agency must provide to Tourism Australia a review of the resourcing by the Agency of the PR Services commissioned under this Agreement. The review must include details about:
- (i) the total number of hours each of the Key Personnel worked on the PR Services under this Agreement;
 - (ii) whether the current resourcing levels are adequate, and if not, the steps that should be taken by the Agency or Tourism Australia to ensure adequate resourcing; and
 - (iii) any other issues Tourism Australia requests the Agency to provide.
- (b) The Agency must provide the review in clause 14.2(a) to Tourism Australia every 3 months from the Commencement Date (on or before the end of January, April, July and October each year).

14.3 Performance review meetings

- (a) Tourism Australia and the Agency must meet every 3 months from the Commencement Date, on a date to be agreed by the parties, for the purpose of reviewing the Agency's performance of its obligations under this Agreement, including the Agency's compliance, and the compliance of all Contractors, with the performance indicators set out in Schedule 7.
- (b) All meetings convened under clause 14.3(a) will be conducted by Tourism Australia and the Agency undertakes to co-operate with Tourism Australia and to fully and genuinely participate in all meetings convened under clause 14.3(a).
- (c) The Agency acknowledges and agrees that the outcomes of any meeting convened under clause 14.3(a) may be used by Tourism Australia for the purpose of determining the extent to which Tourism Australia will request the provision by the Agency of future PR Services under this Agreement.

15. EXTERNAL COSTS

15.1 External party rebates to be given to Tourism Australia

All commissions, fees and rebates received by the Agency as a result of expenditure by Tourism Australia must be passed on to Tourism Australia.

15.2 External costs at net

- (a) The Agency agrees that all work performed by Contractors will be charged at net, with no mark-up or service fee.
- (b) In addition to any other obligation imposed by Tourism Australia in relation to record keeping, the Agency must maintain records of all accounts submitted for work through Contractors for a minimum of 2 Calendar Years from the date the Agency invoices Tourism Australia. These records must be made available to Tourism Australia on request.

16. INTELLECTUAL PROPERTY

16.1 Assignment of Intellectual Property Rights by Agency

The Agency assigns to Tourism Australia all current and future right, title and interest, including all Intellectual Property Rights, in all PR Material created by the Agency such that all of the Agency's right, title and interest, including any Intellectual Property Rights, in that material vest in Tourism Australia immediately on creation.

16.2 Assignment of Intellectual Property Rights owned by third parties

- (a) If any right, title and interest, including any Intellectual Property Rights in or in relation to PR Material, or a part of it, is not capable of vesting in Tourism Australia on its creation under clause 16.1 because the Agency itself is not creating the PR Material, the Agency must, at its own expense, do all things necessary to procure the assignment to Tourism Australia of all Intellectual Property Rights subsisting in that material, either before or at the time of creation of that material, from each person who owns those rights.
- (b) The Agency must immediately notify Tourism Australia in writing (including email) before the creation of any PR Material, or use of the PR Material if the third party rights and property are existing, if it is unable to comply in any respect with clauses 16.2(a).
- (c) Where the Agency notifies Tourism Australia under clause 16.2(b) that it is unable to obtain an assignment required by clause 16.2(a) and Tourism Australia consents, in its absolute discretion, to the provision of a licence in respect of those unassignable Intellectual Property Rights, the Agency must procure a licence in Tourism Australia's favour that provides Tourism Australia with the right to exercise all rights comprised in the copyright of the PR Material (including the right to use, reproduce, adapt, perform and communicate that material to the public) for a period, and on terms, nominated by Tourism Australia.

16.3 Moral Rights

Agency personnel and contractors creating PR Material that will be fully owned by Tourism Australia pursuant to Section 16.1 above, shall waive any and all moral rights they have in such PR Material so that Tourism Australia in its absolute discretion may:

- (a) do any act or omission which would otherwise infringe any Moral Rights in the PR Material;
- (b) use the PR Material (or a substantial part or adaptation of them):
 - (i) with or without attribution of authorship or performership;
 - (ii) with or without other materials comprised in the PR Material, or any other text, data, sounds or images (whether animated or not);
 - (iii) in any medium, in any context and in any way it sees fit;
- (c) add to, delete from or re-title the PR Material, or materially distort, destroy, alter or any other way change the PR Material; and

- (d) reproduce, publish, copy, adapt the PR Material (or a substantial part or adaptation of them), or perform, communicate, show or exhibit the PR Material (or a substantial part or adaptation of them) in or to the public.
- (e) With regard to licenses procured pursuant to Section 16.2 above, Agency shall only obtain moral rights waivers necessary for Tourism Australia to exercise all rights in the PR Material in accordance with the terms nominated by Tourism Australia.

16.4 The Agency must obtain the consents and releases described in clause 16.3 in writing in substantially the same form as the form provided in Schedule 10, or as otherwise agreed (such as, if Agency provides Tourism Australia with a copy of the consent used and it is approved). The Agency must provide Tourism Australia with copies of each written consent obtained by the Agency.

16.5 If the Agency subcontracts any of its obligations under this Agreement in accordance with clause 8, the Agency must procure that all Contractors obtain written consents to all acts and omissions described in clause 16.3 in respect of any Moral Rights in all PR Material created by the Contractors at no cost to Tourism Australia.

16.6 Tourism Australia Materials

The Agency agrees that where Tourism Australia supplies any Tourism Australia Materials to the Agency then:

- (a) all Intellectual Property Rights in Tourism Australia's Materials shall remain Tourism Australia's exclusive property;
- (b) Tourism Australia's Materials shall not (except as agreed by Tourism Australia in writing) be used or disclosed by the Agency for any purpose other than the performance of the Agency's obligations under this Agreement; and
- (c) Tourism Australia represents and warrants that all Tourism Australia Materials, when used by Agency as authorized by Tourism Australia, will (i) not infringe any intellectual property, contractual or personal rights of any third party; (ii) be accurate, complete, and in compliance with all laws, regulations and guidelines applicable to Tourism Australia.

16.7 Notification of infringements

The Agency must notify Tourism Australia immediately if it becomes aware of:

- (a) any infringement or threatened infringement of Tourism Australia's Intellectual Property Rights in Materials provided to the Agency by Tourism Australia or in the PR Material;
- (b) any unauthorised use of Materials provided to the Agency by Tourism Australia or the PR Material; or
- (c) any attack or threatened attack on the validity of the Intellectual Property Rights in and to the Materials provided to the Agency by Tourism Australia or in the PR Material.

16.8 Existing Material

- (a) If the Agency wishes to utilise any Existing Material in its delivery of the PR Services, the Agency must seek Tourism Australia's written approval before proceeding to use such Existing Material. Where possible, the Agency must secure an assignment of Intellectual Property Rights, in any Existing Material for the benefit of Tourism Australia. If the Agency is unable to secure an assignment, the Agency will secure the right to use the Existing Material for a period, and on terms, acceptable to Tourism Australia..
- (b) The Agency must inform Tourism Australia as to whether or not it is able to procure an assignment of the necessary Intellectual Property Rights in, or the exclusive rights to use, any Existing Material to Tourism Australia on the basis of the provisions of clause 16.2.

- (c) In no circumstances shall the Agency make any use of any Existing Material until Tourism Australia has given the Agency written approval.

16.9 Client Presentations

If the Agency wishes to use any of the PR Material in a presentation to prospective clients for the purpose of promoting its own business, the Agency must first obtain Tourism Australia's approval. The Agency agrees that it will not use any of the PR Material in any presentations without Tourism Australia's prior approval.

17. USE OF TALENT AND ENDORSEMENT ARRANGEMENTS

17.1 Use of talent

Where the Agency wishes to engage any person (other than an Endorser as described in clause 17.2) to appear in any PR Material or participate in any PR events organised by the Agency on behalf of Tourism Australia, including "extras" and members of the general public (**Talent**), the Agency must obtain:

- (a) Tourism Australia's approval prior to engaging the services of the Talent; and
- (b) an executed talent release form from each Talent in substantially the same form set out in Schedule 10 (subject to any specific requirements or amendments to the form which may be notified to the Agency by Tourism Australia during the course of its approval of the Talent under clauses 5, 6 and 7), or as otherwise agreed (such as, if Agency provides Tourism Australia with a copy of the consent used and it is approved).

17.2 Appointment of Endorsers

- (a) The Agency must not appoint or enter into any arrangement with any celebrity or famous person who is identified as endorsing the whole or part of a PR Campaign, any PR Material or Tourism Australia (**Endorser**) without Tourism Australia's prior approval.
- (b) The Agency must ensure that an Endorser first executes an agreement, in a form approved by Tourism Australia, prior to engaging the services of the Endorser.
- (c) Where possible, the Agency must secure exclusive rights to use of the Endorser's likeness and image for the benefit of Tourism Australia. If the Agency is not able to secure these exclusive rights, the Agency must notify Tourism Australia prior to engaging the services of the Endorser.
- (d) The Agency must prepare a suitable endorsement agreement for Tourism Australia's review which shall include provisions as follows or as otherwise agreed (such as, if Agency provides Tourism Australia with a copy of the agreement used and it is approved):
 - (i) whereby the Endorser grants to Tourism Australia the right to use his or her image or likeness as part of the PR Campaign or PR Material and for other services as required by Tourism Australia;
 - (ii) verifying the contents of all PR Material which portrays the likeness and image of the Endorser;
 - (iii) confirming that the Endorser consents to any abridgement, alteration or addition to any PR Material which portrays the likeness and image of the Endorser;
 - (iv) confirming that the Endorser consents to any actions by Tourism Australia described in clause 16.3 in relation to any moral rights of the Endorser in any PR Material;
 - (v) where the Endorser is represented as having particular qualifications or credentials, confirming that the representation is true in every respect; and

(vi) confirming that the Endorser assigns all Intellectual Property Rights in all PR Material which portrays the likeness and image of the Endorser to Tourism Australia.

(e) The Agency must provide to Tourism Australia a copy of the draft endorsement agreement described in clause 17.2(d) for Tourism Australia's review and approval.

18. CONFIDENTIALITY

18.1 General obligation of confidence

The Agency acknowledges that the Confidential Information is valuable to Tourism Australia and undertakes to keep the Confidential Information secret and to protect and preserve the confidential nature and secrecy of the Confidential Information.

18.2 Disclosure of Confidential Information

The Agency hereby undertakes:

- (a) Not to disclose, duplicate or use the Confidential Information or permit its use except:
 - (i) for the purpose of providing the PR Services under this Agreement;
 - (ii) with the consent of Tourism Australia, which consent may be given or withheld in Tourism Australia's absolute discretion;
 - (iii) if required to do so by law.
- (b) If the Agency discloses Confidential Information under clauses 18.2(a)(i) or 18.2(a)(ii) it must use reasonable endeavours to ensure that persons receiving Confidential Information from it do not disclose the information except in circumstances permitted in clause 18.2(a).
- (c) The Agency must return to Tourism Australia upon the expiry or earlier termination of this Agreement all documents or material of any kind containing or alluding to Confidential Information, whether directly or indirectly together with all copies of such material, whether prepared by the Agency or provided by Tourism Australia which are then in the Agency's possession or under its control.
- (d) To limit the disclosure of the Confidential Information within its own organisation to those of its officers and employees to whom such disclosure is strictly necessary for the purpose of providing the PR Services hereunder and to ensure that they are bound by the same obligations of confidentiality in respect of the Confidential Information as are imposed on the Agency by this Agreement and to use its best endeavours to ensure that such officers and employees abide by such obligations of confidentiality.
- (e) Not to use the name of Tourism Australia in publicity releases, advertising or promotion of the Agency's services including client lists unless Tourism Australia shall first have given its written consent which shall not be unreasonably withheld.

18.3 Survival of Obligations

The obligations in this clause 18 will survive termination (for whatever reason) of this Agreement.

19. PROTECTION OF PERSONAL INFORMATION

19.1 Privacy Laws

The Agency must:

- (a) comply with all Privacy Laws in relation to any Personal Information, whether or not the Agency is an organisation bound by the Privacy Act;

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- (b) without limitation to clause 19.1(a), not do anything or omit to do anything with any Personal Information that would cause Tourism Australia to breach its obligations under a Privacy Law;
- (c) comply with any directions, guidelines, determinations or recommendations which are notified to the Agency in writing by Tourism Australia; and
- (d) ensure that all personnel required to deal with Personal Information for the purposes of this Agreement are made aware of the obligations set out in this clause 19.

19.2 Notification

The Agency must notify Tourism Australia immediately if the Agency becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 19 whether by the Agency or its Representatives.

19.3 Contractors

The Agency agrees to ensure that any subcontract entered into by the Agency for the purpose of fulfilling its obligations under this Agreement imposes on the subcontractor the same obligations that the Agency has under this clause 19 (including this requirement in relation to subcontracts), if applicable to the services being provided by the subcontractor.

20. WARRANTIES

20.1 Warranties by the Agency

The Agency warrants, represents and undertakes as at the date of this Agreement and at all times after the date of this Agreement, that:

- (a) **(corporate power and authority)** it has full corporate power and authority to enter into, perform and observe its obligations under this Agreement, and that the execution, delivery and performance of this Agreement by it has been duly and validly authorised by all necessary corporate action;
- (b) **(no contravention of constituent documents)** this Agreement and the transactions contemplated by it do not contravene its constituent documents or any law, regulation or official directive or any of its obligations or undertakings by which it or any of its assets are bound or cause a limitation on the powers of the Agency or of its directors to be exceeded;
- (c) **(obligations are binding and enforceable)** its obligations under this Agreement are valid and binding and enforceable in accordance with their terms;
- (d) **(authority to act)** its Representatives described in this Agreement or nominated under this Agreement have the authority to act for and on behalf of it in relation to the matters within their authority under this Agreement, unless the Agency notifies Tourism Australia to the contrary;
- (e) **(the Agency's proposal to Tourism Australia)** it will, and its Representatives will, carry out its work under this Agreement in accordance with the declarations the Agency has made in the proposal dated 29 April 2011 and submitted by the Agency to Tourism Australia in response to Tourism Australia's request for tender for the provision of PR Services for the Americas;
- (f) **(due care and skill)** it will provide the PR Services to Tourism Australia with the level of care, skill, knowledge, experience and ability which may be expected of a professional organisation experienced in providing services of the type and complexity of the PR Services
- (g) **(efficiency and cost-effectiveness)** it will use all resources and/or services necessary to provide the PR Services efficiently, and it will carry out the Strategic PR Services in the

most cost-effective manner, consistent with the level of quality and performance required under this Agreement;

- (h) **(compliance)** all PR Services provided and any PR Material produced under this Agreement:
 - (i) complies with all communications laws, regulations, code of conduct and industry standards in the country in which such PR Material is created, and Agency shall use best efforts to ensure that it complies with Australia law as well;
 - (ii) complies with the requirements of all government and statutory bodies;
 - (iii) does not infringe the rights (including, without limitation, the Intellectual Property Rights) of any person when used by Tourism Australia (i) without modification; (ii) for the original purpose and in the original territory in which such PR Material was created; and (iii) in accordance with all licenses and consents to third party rights and Existing Materials approved for use by Tourism Australia; and excluding any portions of PR Materials supplied by Tourism Australia or its other agencies and vendors; and
 - (iv) is, to the Agency's knowledge (or should be known to Agency), not false or misleading, offensive, defamatory or in any way contrary to any applicable codes of public relations laid down whether on a statutory or a self-regulatory basis in whichever jurisdiction the PR Services are provided or the PR Materials are used or intended to be used;
- (i) **(compliance and timeliness)** it will at all times comply with all Tourism Australia's reasonable directions and provide the PR Services in a timely manner (subject to Section 4.2(c) above);
- (j) **(reputation of Tourism Australia)** it will, and its Representatives will, not be a party to the doing of any act, matter or thing prejudicial to the goodwill, commercial reputation or overall public image of Tourism Australia;
- (k) **(Conflicts of Interest)** to the best of its knowledge, a Conflict of Interest or risk of Conflict of Interest does not exist and is not likely to arise in relation to the performance of the Agency's obligations under this Agreement;
- (l) **(compliance with policies and procedures)** it will, and its Representatives will, comply with any reasonable requirements of Tourism Australia including all Tourism Australia's policies and procedures relevant to providing the PR Services;
- (m) **(not named on certain lists)** neither it nor any of its Representatives are named as:
 - (i) a proscribed person or entity under the *Charter of the United Nations Act 1945* (Cth) and/or under the *Charter of United Nations (Terrorism and Dealing with Assets) Regulations 2002* (Cth); and/or
 - (ii) not complying with the *Equal Opportunity for Women in the Workplace Act 1999* (Cth);
- (n) **(no receipt of money or benefits)** neither it nor any of its Representatives has or will receive money (including commissions), benefits or anything of value from Contractors in relation to the Agency's provision of the PR Services under this Agreement;
- (o) **(no offer of money or benefits)** that no money, benefit or anything of value has or will be offered or given to Representatives of Tourism Australia in relation to the Agency's provision of the PR Services under this Agreement;

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- (p) **(bribery of foreign public officials):**
 - (i) it has not provided, offered or promised a benefit to another person that is not legitimately due to that person with the intention of influencing a foreign public official in the exercise of his or her duties in order to obtain or retain business or a business advantage not legitimately due to its recipient;
 - (ii) in this clause 20.1(p), expressions defined in Division 70 of the Commonwealth Criminal Code in the *Criminal Code Act 1995* (Cth) have the meanings given to those expressions in that division; and
 - (iii) the warranty in clause 20.1(p)(i) does not apply to:
 - (A) conduct that is lawful in the foreign public official's country (as set out in section 70.3 of the Commonwealth Criminal Code); or
 - (B) facilitation payments (as set out in section 70.4 of the Commonwealth Criminal Code) that are notified to the other party;
- (q) **(reliance on representations, warranties and undertakings)** it acknowledges that Tourism Australia has executed this document and agreed to take part in the transactions that it contemplates in reliance on the representations, warranties and undertakings that are made or repeated in this clause 20 and contained in its proposal to Tourism Australia in response to Tourism Australia's request for tender for the provision of PR Services in the Americas dated 29 April 2011; and
- (r) **(repetition of representations, warranties and undertakings)** the representations, warranties and undertakings in this clause 20 are taken to be repeated on each date from the date of this document until the end of the Term or any date after the end of the Term on which all amounts outstanding under this Agreement have been paid in full, on the basis of the facts and circumstances as at that date; and
- (s) **(financial guarantee)** the Agency must procure from its parent company Omnicom Group, Inc, in a form suitable to Tourism Australia, a guarantee of the financial obligation of the Agency.

20.2 Warranties by Tourism Australia

Tourism Australia warrants, represents and undertakes as at the date of this Agreement and at all times after the date of this Agreement, that:

- (a) it shall review and approve PR Materials produced by Agency and sent by Agency to Tourism Australia for review and approval, prior to authorizing Agency to distribute or publish same to the media or public, and shall be responsible for ensuring that all such PR Materials and descriptions, disclaimers and claims regarding Australia tourism are accurate, non-misleading, non-defamatory, complete and comply with all laws and regulations applicable to Tourism Australia; and
- (b) all Tourism Australia Materials, when used by Agency as authorized by Tourism Australia, will not infringe any intellectual property, contractual or personal rights of any third party.

21. INSURANCE

21.1 The Agency must at its cost take out and maintain the following policies during the Term:

- (a) and for an additional 12 months after the termination of this Agreement for any reason, professional indemnity insurance for an indemnity cover of at least AUD \$5 million for any one claim; and
- (b) errors and omissions insurance for an indemnity cover of at least AUD \$10 million for any one claim;
- (c) umbrella coverage for an indemnity cover of at least AUD \$10 million for any one claim; and

(d) workers' compensation insurance,

(Insurance Policies) in respect of liability or loss which may be incurred or suffered in connection with the performance or purported performance of the Agency's obligations under this Agreement.

21.2 The Agency must ensure that the Insurance Policies referred to in clauses 21.1(b) and 21.1(c) provide insurance coverage against loss or damage for any and all Tourism Australia property:

- (a) for the duration of the time that the Tourism Australia property is in the Agency's possession; and
- (b) when any Tourism Australia property is in transit between the Agency and any third party for the purposes of production or publication

21.3 The Agency must:

- (a) ensure that the Insurance Policies name Tourism Australia as an insured in a manner acceptable to Tourism Australia;
- (b) not cancel any of the Insurance Policies without Tourism Australia's prior written consent;
- (c) ensure that the Insurance Policies each include a cross-liability clause whose wording is acceptable to Tourism Australia; and
- (d) on request by Tourism Australia, promptly provide to Tourism Australia copies of the certificate of insurance for the Insurance Policies.

22. INDEMNITY

22.1 General

The Agency will defend, indemnify and hold Tourism Australia and the Representatives of Tourism Australia (**indemnified persons**) harmless against any loss suffered or incurred by the indemnified person arising out of third party claims resulting from:

- (a) any breach by the Agency of its obligations under this Agreement (including breach of a representation or warranty made by the Agency);
- (b) any negligent or wrongful act or omission of the Agency, including negligent or wrongful acts and omissions of the Agency's Representatives;
- (c) any workers' compensation claim made against Tourism Australia by or in relation to any personnel employed or contracted by the Agency to perform work in relation to this Agreement;
- (d) any injury to, or death of, a natural person and any loss of, or damage to, real or personal property of Tourism Australia or third party, caused or contributed to by the negligence or wilful misconduct of Agency or the Agency's Representatives;
- (e) any claim, action or proceeding by a third party caused or contributed to by the negligence or wilful misconduct of Agency or the Agency's Representatives,

except to the extent that the loss is directly attributable to the negligence or wrongful act or omission of the indemnified person, or the indemnity from Tourism Australia set forth below.

Tourism Australia will defend, indemnify and hold Agency and the Representatives of Agency (**Agency indemnified persons**) harmless against any loss suffered or incurred by the Agency indemnified person arising out of third party claims resulting from:

- (a) any breach by Tourism Australia of its obligations under this Agreement (including breach of a representation or warranty made by Tourism Australia);

- (b) any negligent or wrongful act or omission of Tourism Australia, including negligent or wrongful acts and omissions of Tourism Australia's Representatives; or

Neither Agency nor Tourism Australia shall be held liable to the other for indirect, incidental, consequential, special or punitive damages arising in any manner from the activities contemplated by this Agreement, whether under contract, tort, or other cause of action, even if such party has been advised of the possibility of such damages. This limitation on liability shall not apply to indemnity obligations with respect to third party claims.

22.2 Survival after termination

The indemnity in this clause 22 survives the expiry or termination of this Agreement.

23. TERM AND RENEWAL

23.1 Term

This Agreement is for a period commencing on the Commencement Date and ending on 8 September 2014 unless terminated earlier in accordance with this Agreement.

23.2 Tourism Australia may renew agreement

- (a) Tourism Australia has an option to renew this Agreement for a further period of one year from the expiry date of 8 September 2014.
- (b) Tourism Australia may in its sole discretion decide whether or not to take up the options to renew this Agreement under clause 23.2(a).

23.3 Exercise of option

To exercise the option to renew, Tourism Australia must give not less than 3 months written notice to the Agency before the expiry date of 8 September 2014.

23.4 Terms of renewal

The terms of this Agreement will apply as far as possible with any necessary changes during the Further Term.

24. TERMINATION

24.1 Termination with notice

- (a) Tourism Australia may at any time terminate this Agreement, without cause or compensation, by giving to the Agency a minimum of 30 days' written notice. Agency may at any time terminate this Agreement, without cause or compensation, by giving to Tourism Australia a minimum of 180 days' written notice
- (b) Upon any notice under clause 24.1(a), the Agency shall work with Tourism Australia to wind down and/or transition the services during the notice period.
- (c) Except as expressly provided otherwise in this Agreement, Tourism Australia's obligations to pay (to the extent it has not already paid) any sums to the Agency upon termination of this Agreement will be no more than the sum of properly incurred and unpaid invoice amounts (for both services and out of pocket expenses incurred or irrevocably committed), and Tourism Australia will have no further liability to the Agency whatsoever including, without limitation, no responsibility for any payment for PR Services after the expiry or effective date of termination of this Agreement.

24.2 Immediate termination by Tourism Australia

Tourism Australia may terminate this Agreement immediately by giving the Agency written notice if:

- (a) the Agency breaches this Agreement and, if the breach is capable of remedy, has failed to rectify that breach within 7 days after receipt of written notice from Tourism Australia giving full particulars of the breach and the steps required to remedy the breach;
- (b) an Insolvency Event occurs in respect of the Agency; or
the Agency is involved in any conduct or activity that in Tourism Australia's reasonable opinion, may harm Tourism Australia or its name or reputation.
- (c) the Agency is involved in a major controversy;
- (d) the Agency is involved in a situation which in Tourism Australia's reasonable opinion, brings the Agency into disrepute, contempt, scandal or ridicule;
- (e) the Agency offends public opinion or the sensibilities of any class or group, in Tourism Australia's reasonable opinion;
- (f) the Agency is prevented for any reason from carrying on business as a public relations agency;
- (g) the Agency or any of its Representatives (where relevant) are named as:
 - (i) a proscribed person or entity under the *Charter of the United Nations Act 1945* (Cth) and/or under the *Charter of United Nations (Terrorism and Dealing with Assets) Regulations 2002* (Cth); and/or
 - (ii) not complying with the *Equal Opportunity for Women in the Workplace Act 1999* (Cth);
- (h) any of the Agency's Representatives is convicted of an indictable criminal offence or a criminal offence involving fraud or dishonesty;
- (i) the Agency fails to comply with clause 30.13(b);
- (j) a Conflict of Interest occurs or arises; or
- (k) a material change in ownership or control of the Agency occurs which in the reasonable opinion of Tourism Australia:
 - (i) adversely affects Tourism Australia's rights;
 - (ii) adversely affects the Agency's ability to perform its obligations under this Agreement or any Brief; or
 - (iii) is otherwise contrary to Tourism Australia's interests.

24.3 Immediate termination by the Agency

The Agency may terminate this Agreement immediately by giving Tourism Australia written notice if:

- (a) Tourism Australia breaches this Agreement and, if the breach is capable of remedy, has failed to rectify that breach within 30 days after receipt of written notice from the Agency giving full particulars of the breach and the steps required to remedy the breach; or
- (b) an Insolvency Event occurs in respect of Tourism Australia.

24.4 Force Majeure Event

If a Force Majeure Event continues for more than 30 days, either party may terminate this document in accordance with clause 25.4.

24.5 Tourism Australia may direct Agency to cease work

- (a) Tourism Australia may direct the Agency to cease work on any PR Services if the Agency fails to deliver the PR Services to Tourism Australia in compliance with the requirements of this Agreement.
- (b) Tourism Australia may exercise its right under clause 24.5(a) by providing to the Agency written notice of the direction to cease work, details of the relevant PR Services, and setting out the aspects of the work which have not been met.
- (c) The Agency must cease work on the PR Services immediately upon the Agency receiving the written notice from Tourism Australia under clause 24.5(b).

24.6 Cancellation of PR Campaigns

- (a) Tourism Australia reserves the right to cancel a PR Campaign or Ad Hoc Project delivery by giving the Agency not less than 5 Business Days written notice of the cancellation of the PR Campaign or Ad Hoc Projects. Tourism Australia does not have to provide to the Agency its reasons for exercising its right under this clause 24.6(a).
- (b) Upon the Agency receiving the written notice from Tourism Australia under clause 24.6(a), the Agency must immediately:
 - (i) cease work on the PR Campaign or Ad Hoc Project; and
 - (ii) instruct any third party commissioned by the Agency in relation to the PR Campaign to cease work on the Ad Hoc Project.
- (c) In the event that Tourism Australia cancels a PR Campaign or Ad Hoc Project in accordance with clause 24.6(a), Tourism Australia will pay to the Agency:
 - (i) any outstanding amount for costs incurred (or irrevocably committed) by the Agency in relation to that PR Campaign or Ad Hoc Project on or before the date on which the written notice is provided to the Agency; and/or
 - (ii) any cancellation costs where these cannot be avoided by the Agency giving instructions to a third party in accordance with clause 24.6(b)(ii).

25. FORCE MAJEURE

25.1 Notice and suspension of obligations

If a party to this Agreement is affected, or likely to be affected, by a Force Majeure Event:

- (a) that party must give the other prompt notice of that fact including:
 - (i) full particulars of the Force Majeure Event;
 - (ii) an estimate of its likely duration;
 - (iii) the obligations affected by it and the extent of its effect on those obligations; and
 - (iv) the steps taken to rectify it; and
- (b) the obligations under this Agreement of the party giving the notice are suspended to the extent to which they are affected by the relevant Force Majeure Event as long as the Force Majeure Event continues.

25.2 Effort to overcome

A party claiming a Force Majeure Event must use its best endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as possible. However, this does not require a party to settle any industrial dispute or claims or demands by any government agency in any way it does not want to.

25.3 Alternative supply

During any period in which a party to this Agreement is not performing obligations because of a claimed Force Majeure Event, the other party may (but need not) make alternative arrangements for the performance, whether by another person or otherwise, of any obligation which the party claiming the Force Majeure Event is not performing without incurring any liability to that party.

25.4 Termination

If a Force Majeure Event continues for more than 30 days, either party may terminate this document by giving at least 5 days written notice to the other party.

26. OBLIGATIONS WHEN AGREEMENT ENDS

26.1 Agency must assign rights and contracts

- (a) Upon the expiry or termination of this Agreement, the Agency must within 7 days notify Tourism Australia of:
 - (i) any right obtained by the Agency which relates to providing the PR Services to Tourism Australia; and
 - (ii) any contract entered into by the Agency which relates to providing the PR Services to Tourism Australia but has not been completed at the expiry or termination of this Agreement.
- (b) On receiving notice from Tourism Australia that it wishes to assume any right or contract referred to in clause 26.1(a), the Agency must immediately, at its own expense, assign or novate to Tourism Australia that right or contract.
- (c) Upon the expiry or termination of this Agreement, the Agency must comply with the obligations set out in Schedule 6.

26.2 Tourism Australia must pay outstanding fees

- (a) If Tourism Australia terminates this Agreement early pursuant to its rights under this Agreement, Tourism Australia's obligations to pay (to the extent it has not already paid) any sums to the Agency will be no more than the sum of properly incurred and unpaid invoice amounts (including all sums falling due during the notice period, if any), and Tourism Australia will have no further liability to the Agency whatsoever including, without limitation, no responsibility for any payment for PR Services after the expiry or termination of this Agreement (unless specifically authorized in writing by Tourism Australia).
- (b) If Tourism Australia terminates this Agreement in accordance with clause 24.1, Tourism Australia will pay the proportion of the PR Services Fees which is due up to and including the last day of the notice period set out in clause 24.1.

26.3 Agency must return Materials and Information

Upon the expiry or termination of this Agreement the Agency must within 7 days (at Tourism Australia's direction) either destroy or deliver to Tourism Australia, at the Agency's expense, all Materials and information (including any PR Material and Tourism Australia Confidential Information), whether complete or incomplete, of any kind in the Agency's possession which:

- (a) has arisen out of any of the PR Services provided under this Agreement by or for the Agency to Tourism Australia; or
- (b) Tourism Australia owns, including Materials or information that incorporates customer information or any Intellectual Property Rights owned, controlled or licensed by or to Tourism Australia.

26.4 Continuing obligations

- (a) The parties' rights, duties and responsibilities under this Agreement will continue in full force during the notice period.
- (b) The following clauses in this Agreement survive the expiry or termination of this Agreement:

Clause 10	Records
Clause 16	Intellectual Property
Clause 18	Confidentiality
Clause 19	Protection of Personal Information
Clause 20	Warranties
Clause 22	Indemnity

26.5 Final invoices

On termination of this Agreement for any reason, the Agency must submit final invoices to Tourism Australia in accordance with clause 12.

27. TRANSITIONAL ARRANGEMENTS

Upon the expiry or termination of this Agreement, the Agency must comply with Schedule 6 and the terms of any transitional arrangement agreed between the parties in accordance with Schedule 6.

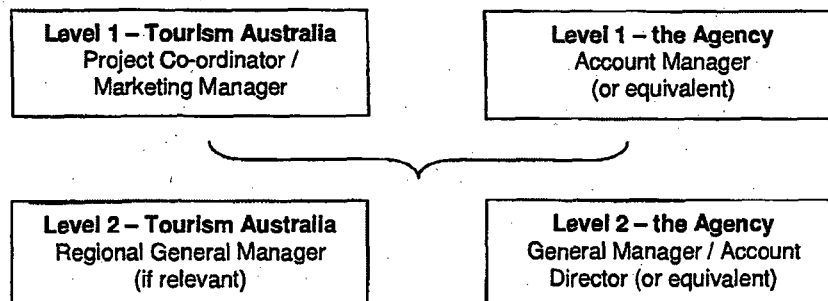
28. DISPUTES

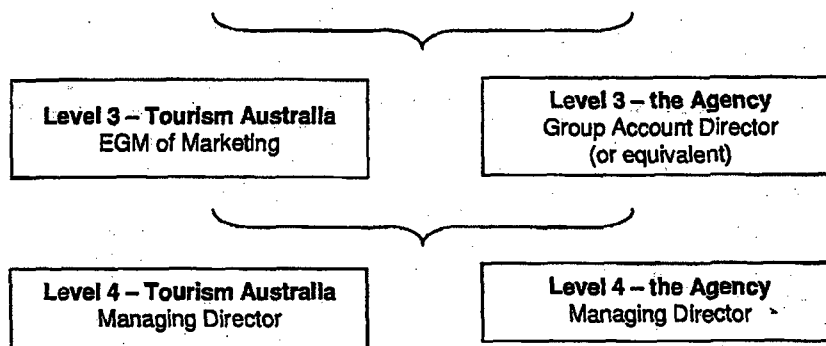
28.1 Notification of Dispute

If either party believes that there is a Dispute under this Agreement, that party must give written notice to the other party specifying the details of the Dispute.

28.2 Reasonable endeavours to settle

- (a) If a Dispute is notified by a party under clause 28.1, the parties undertake in good faith to use all reasonable endeavours to settle the Dispute expeditiously.
- (b) The parties must use their best endeavours to arrange face-to-face meetings (where appropriate) or telephone conferences as required, at mutually convenient times and places, between negotiators for each party at the successive levels set out below:





- (c) At each level set out in clause 28.2(b), the negotiators will have a period of 10 Business Days (starting on the date of receipt of the notification of a Dispute under clause 28.1) in which to resolve the Dispute. Unless the parties otherwise agree, if the Dispute is not resolved within the time allocated under this clause 28.2(c), the negotiations will automatically proceed to the next level set out in clause 28.2(b) immediately after the expiry of the 10 Business Days.

28.3 Mediation

- (a) Any Dispute that is not resolved by the parties under clause 28.2 is to be initially mediated. Mediation is to be conducted by the International Mediation and Arbitration Centre (IMAC) in Malibu California under the IMAC rules then in effect.
- (b) Any mediation undertaken pursuant to this clause 28.3 must be conducted in English unless the parties otherwise agree.

28.4 Arbitration

- (a) Any Dispute that is not resolved by mediation under clause 28.3 must be referred to arbitration to be conducted by the International Mediation and Arbitration Centre (IMAC) in Malibu California under the IMAC rules then in effect.
- (b) The arbitrator is to be appointed by IMAC.
- (c) Any arbitration undertaken pursuant to this clause 28.4 must be conducted in English unless the parties otherwise agree.
- (d) A party may be represented at the arbitration hearing by a duly qualified legal practitioner or other representative.

28.5 Legal action

Before a party takes any action in a court of law in respect of a Dispute (with the exception of urgent interlocutory relief), the parties must have followed the dispute resolution procedure set out in this clause 28 and that Dispute must have been referred to arbitration under this clause 28 and a final award handed down.

28.6 Performance of this Agreement

- (a) The parties must continue to perform their obligations under this Agreement during the period in which any Dispute is being resolved under this clause 28.
- (b) If either party exercises its right to terminate under clause 24, then all obligations to negotiate under this clause 28 will automatically cease from the date the notice of termination is deemed to be received under clause 29.3.

29. NOTICES

29.1 Notice requirements

Except where otherwise prescribed by this Agreement, any notice or any other communication including any approval, consent, invoice, request, demand or other communication in connection with this Agreement, will be effective if it is:

- (a) in legible writing and in English;
- (b) signed by:
 - (i) for legal notices, a director of the relevant party; or
 - (ii) for all operational matters, the relevant Tourism Australia or Agency Project Co-ordinator; and
- (c) served on a Tourism Australia or Agency Project Co-ordinator by:
 - (i) delivery to the relevant Tourism Australia or Agency Project Co-ordinator (as appropriate);
 - (ii) prepaid ordinary post (airmail if posted to or from a place outside Australia) to the relevant address specified in clause 29.4;
 - (iii) facsimile to the facsimile number of the recipient as specified in Schedule 4; or
 - (iv) for operational matters only, by email emanating from the personal email address of the relevant Project Co-ordinator.

29.2 Notice takes effect

Unless a later time is specified in it, a notice, approval, consent or other communication which is delivered by hand takes effect from the day it is received by the specified recipient.

29.3 Deemed receipt

A notice is taken to be received:

- (a) in the case of a posted letter, on the third (seventh, if posted to or from a place outside Australia) day after posting;
- (b) in the case of facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient as specified in Schedule 4; and
- (c) if permitted by this Agreement, in the case of email,
 - (i) by 5.00pm (local time in the place of receipt) on a Business Day, on that day; or
 - (ii) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day, on the next Business Day.

29.4 Postal addresses for notice

Tourism Australia

6100 Center Drive, Suite 1150, Los Angeles, CA 90045, USA.

Agency (addressed to Chief Financial Officer)

1285 Avenue of the Americas, New York, NY 10019 USA

30. GENERAL

30.1 Further assurances

Each party must promptly execute all documents and do all things that the other party from time to time reasonably requires of it to effect, perfect or complete the provisions of this Agreement and any transaction contemplated by it.

30.2 Prohibition and enforceability

- (a) Any provision of, or the application of any provision of, this Agreement and any transaction contemplated by it which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, this Agreement and any transaction contemplated by it which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

30.3 Severance

- (a) If a provision of this Agreement is void, unenforceable or illegal in a jurisdiction, it is severed from the remainder for the purposes of enforcement in that jurisdiction.
- (b) The remainder of this Agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.
- (c) In the event of a holding of invalidity so fundamental that it alters the basic nature of this Agreement, the parties must promptly commence good faith negotiations to remedy the invalidity.

30.4 Publicity

The Agency may not make press or other announcements or releases relating to this Agreement without Tourism Australia's prior written approval, unless the announcement or release is required by law.

30.5 Variation and waivers

- (a) A provision of, or a right created under, this Agreement may not be varied or waived except in writing, signed by the party or parties to be bound.
- (b) It is expressly agreed that any variation of this Agreement will only be effective if it is in writing and it signed by both parties.
- (c) A failure by a party to insist upon a strict performance of any of the terms and conditions of this Agreement is not deemed to be a variation waiver of any subsequent breach or default of the terms and conditions of this Agreement.

30.6 Rights cumulative

Except as expressly provided to the contrary in this Agreement, the rights, powers, discretions, authorities and remedies provided in this Agreement are cumulative with, and do not exclude, the rights, powers, discretions, authorities or remedies of a party provided by law independently of this Agreement.

30.7 Exercise of rights

- (a) Except as expressly provided to the contrary in this Agreement, a party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy.
- (b) A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that, or of any other, right, power or remedy.
- (c) Failure by a party to exercise, or a delay in exercising, a right, power or remedy does not prevent its exercise.

30.8 Entire agreement

This Agreement constitutes the entire agreement between the parties about its subject matter and any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect.

30.9 Governing law and submission to jurisdiction

- (a) This Agreement is governed by the laws of California USA.
- (b) In all disputes or claims, except those which it is determined requires the Federal Court of Australia or the High Court of Australia to exercise jurisdiction because the matter is one that affects the role or functions of the Tourism Australia as a Commonwealth statutory authority, the parties will submit to the jurisdiction of the courts of California USA and of any court that may hear appeals from any of those courts, for any proceedings in connection with this Agreement.
- (c) Each party irrevocably waives:
 - (i) any objection to the venue of any proceedings on the ground that they have been brought in an inconvenient forum; and
 - (ii) any immunity from set off, suits, proceedings and execution to which it or any of its property may now or in the future be entitled under any applicable law.

30.10 Costs

- (a) Each party must pay its own legal and other costs and expenses in relation to the negotiation, preparation, execution, and completion of this Agreement and other related documentation.
- (b) The Agency must pay all stamp duty (if any) on this Agreement and on any instrument, transaction or other document contemplated by or necessary to give effect to this Agreement, unless otherwise expressly provided.

30.11 Counterparts

- (a) This Agreement may be executed in any number of counterparts.
- (b) All counterparts taken together constitute one instrument.
- (c) A party may execute this Agreement by signing any counterpart.

30.12 Amendment

This Agreement can only be amended or replaced by another document executed by the parties.

30.13 Assignment

- (a) Tourism Australia may assign its rights under this Agreement to any person including, without limitation, a contractor or other representative of Tourism Australia without the consent of the Agency.
- (b) The Agency may not assign any of its rights under this Agreement without the prior written consent of Tourism Australia.
- (c) This Agreement shall be binding upon and ensure to the benefit of and be enforceable by respective successors and assigns of Tourism Australia and the Agency.